UNITED
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CRC

Convention on the
Rights of the Child

Distr.
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1 February 1996

ENGLISH ONLY

COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 1993

Addendum

AUSTRALIA

[8 January 1996]

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AUSTRALIA

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Australia's Report under the Convention on the Rights of the Child

December 1995

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A. GENERAL MEASURES OF IMPLEMENTATION

Article 4

> ***States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.***

Article 42

> ***States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.***

Article 44(6)

> ***States Parties shall make their reports widely available to the public in their own countries.***

(a) The measures taken to harmonise national law and policy with the provisions of the Convention

Background

1. Successive Australian Governments have acknowledged the rights of children as fundamental human rights. In 1981 this acknowledgment was made through the inclusion of the UN Declaration on the Rights of the Child 1959 as a Schedule to the Human Rights Commission Act 1981. In 1986 this acknowledgment was re-affirmed by the inclusion of the Declaration as a Schedule to the legislation which replaced the 1981 Act, the Human Rights and Equal Opportunity Commission Act 1986.

2. Australia played an active role in the development of the UN Convention on the Rights of the Child which came into force internationally on 2 September 1990. Throughout the drafting stages of the Convention (which took 10 years) the Federal Government consulted the State and Territory Governments. State Government representatives also participated in the Australian delegations to the UN Working Group which drafted the Convention. Following further consultations with State and

Territory Governments, the Convention was ratified by Australia on 17 December 1990 and entered into force for Australia on 16 January 1991.

3. In announcing Australia's ratification of the Convention, the Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the then Attorney-General, Michael Duffy, said that this step represented an 'important new development in the protection of the rights of children and indicates the concern of the Australian Government to assist to the greatest extent possible in the improvement of human rights throughout the world'.

4. On 22 December 1992 the Attorney-General declared that the Convention on the Rights of the Child would be made an international instrument for the purposes of the Human Rights and Equal Opportunity Commission Act 1986, thus enabling the Commission to conciliate complaints about acts or practices of the Federal Government which breach the rights in the Convention. This declaration took effect on 13 January 1993.

5. In addition to the rights provided under the Human Rights and Equal Opportunity Commission Act 1986, the provisions of the Convention are implemented by a wide range of Federal, State and Territory legislation, policies and programs which affect children. This includes legislation, policies and programs in the areas of family law, social security, health and community services, education, employment, culture and criminal and juvenile justice.

6. Australia does not propose to implement the Convention on the Rights of the Child by enacting the Convention as domestic law. The general approach taken in Australia to human rights and other conventions is to ensure that domestic legislation, policies and practice comply with the convention prior to ratification. In the case of the Convention on the Rights of the Child a complaints mechanism also exists pursuant to the Human Rights and Equal Opportunity Commission Act 1986 referred to above.

7. In the Core Document for Australia, the Australian general political structure is described as a Federal system in which legislative, executive and judicial powers are shared or distributed between the various Federal institutions, the six States and two internal self-governing Territories. In this report the responsibilities of the States, internal Territories and Federal Government will be covered. Whilst this report has been compiled by the Federal Government, the Federal Government has been reliant on the States to provide information in relation to areas of State responsibility.

8. The Federal Government administers various external territories. Those inhabited are the Territory of Cocos (Keeling) Islands and the Territory of Christmas Islands. The Federal Government retains a power of veto over some areas of legislation for Norfolk Island, which is administered under the Norfolk Island Act 1979 (for further information see Annex 3). In this report a reference to the States and Territories excludes a reference to the Territory of Cocos (Keeling) Islands, the Territory of Christmas Islands and Norfolk Island, unless a specific reference is made to them.

9. The approach taken in this report is to provide information concerning legislation, policies and programs in relation to areas affecting the rights of the child. As this is Australia's initial report this information is given in some detail. In later reports Australia may produce a less comprehensive report with greater analysis of issues.

10. In May 1995 in the Justice Statement the Federal Government announced that it would establish a regular Forum for non-government organisations to discuss human rights concerns with the Federal Government. The Forum will include the discussion of children's issues.

11. In relation to the reporting process under the Convention, the Forum will assist a process of greater consultation with non-government organisations in the period leading up to the examination of this report before the Committee on the Rights of the Child. At the examination Australia will present reports prepared by non-government organisations. Australia sees the preparation of this report as part of a cyclical process involving the preparation of the report, its submission to the Committee, the tabling of the report in Federal Parliament, consultations with non-government organisations, its examination by the Committee, the tabling of the Committee's record of the report's examination in Federal Parliament and discussion regarding the same with Australian Governments.

Achievements to date

12. In the period since ratification of the Convention, Australia has taken a number of important steps to ensure the rights set down in it. A discussion of major initiatives follows.

Agenda for Families

13. The Agenda for Families was developed during the International Year of the Family and announced in May 1995 in the 1995-96 Federal budget.

14. The Agenda includes a new means-tested maternity allowance of $816 which will be introduced from 1 February 1996. The allowance will provide a vital boost to family income when it is most needed: at the birth of a baby. About 85 per cent of women will be eligible for the payment which will be available to women both at home and in paid employment.

15. The Government is committed, through the ACCORD VIII, to reviewing the allowance over the next four years and improving it as economic and budgetary circumstances permit.

16. Other measures announced in the budget to assist families included:

- increases in existing social security payments, specifically, the Guardians Allowance paid to sole parent pensioners and rental assistance for families with children;
- additional child care places, specifically in Family Day Care, Outside School Hours Care and services in rural and remote areas;
- programs to increase immunisation rates of children and to reduce the consumption of tobacco, particularly among young people;
- measures to help families to avoid legal problems and deal with disputes (see Access to Justice, below); and
- additional expenditure to improve the standard of health of Aboriginal and Torres Strait Islander peoples (see Aboriginal and Torres Strait Islander issues, below).

Child care

17. Since 1983 the number of Government-funded child care places has increased more than five times and will continue to grow. The Federal Government has made a commitment to fully meet work related demand for child care on a target of 354,000 places by the year 2000-01, through the implementation of the expanded National Child Care Strategy, the New Growth Strategy to 2000-01 and incentives to encourage the involvement of employers and the private sector. Recent moves to provide additional child care places are mentioned under Agenda for Families, above. Efforts have been made to ensure that child care is affordable through the availability of Child Care Assistance, a means tested payment to help low and middle income families with the cost of their child care in Federally funded services, and a new Childcare Cash Rebate for all working parents, paid on the basis that child care is a necessary cost of earning a living.

18. In August 1994 the Australian Law Reform Commission issued Child Care for Kids, the report of its review of children's services legislation. Main recommendations were as follows:

- Federal child care legislation should establish key principles for federally funded children's services - accessibility, affordability and equity;
- the legislation should provide that the welfare of the child for whom child care is being or will be provided is to be the paramount consideration in any decision or action taken under and for the purposes of the legislation; and
- the legislation should set out priorities for the program (the major priority is to provide child care for children of working parents but children identified in the government's social justice strategy, such as Aboriginal and Torres Strait Islander children, children from non-English speaking backgrounds and children with a disability, should also have priority).

19. The report, which is currently being examined by the Government in the context of the Council of Australian Governments (COAG) review of Child Care, will enable the Government to build on its already considerable achievements in the provision of children's services.

Social security

20. In Australia there are many programs which maintain and improve the welfare of children and young people. For example, the Basic Family Payment is a general payment to families with children, in recognition of the costs of raising children. Additional Family Payment is provided for low-income families. Family Payment is directed to the primary carer who, in practice, is usually the mother. Family Payments are untaxed and increase in line with the Consumer Price Index each year. Children are also the indirect beneficiaries of payments made to their parents or carers through the social security system, such as unemployment allowances or the Sole Parent Pension.

21. The Government has established benchmarks of adequacy for Family Payment which have been achieved and maintained since July 1990. These benchmarks are defined as the sum of Basic and Additional Family Payment as a proportion of the combined married rate of pensions and benefits. When introduced, the benchmarks were set at 15 per cent for children under 13 years and 20 per cent for children aged 13 to 15 years. In January 1995, these were increased to 16.6 per cent and 21.6 per cent respectively.

22. The Federal Government's reforms to family payments have been of considerable benefit to families with young children. Since 1983 the Government has increased child payments to low-income families by 83 per cent for children under 13, and 157 per cent for children aged 13 to 15.

23. The Parenting Allowance was introduced from 1 July 1995 in order to provide an independent source of income of up to $272 per fortnight for families, especially low income families where one of the partners is at home looking after children. It recognises the important role that the care of children has in the Australian community by providing a payment that does not depend on the recipient seeking employment. In this way, Parenting Allowance better enables low income families to choose whether one or both partners enters the workforce. At the same time, a lower rate of Parenting Allowance (currently provided as Home Child Care Allowance) may still be payable to higher income families where the person with day to day childraising responsibilities has little personal income.

The Child Support Scheme

24. The Child Support Scheme was introduced in the late 1980s with the objective of improving the welfare of children of separated parents. This scheme arose mainly out of concern to reduce poverty among sole-parent families by ensuring that both parents contribute to the costs of their children in accordance with their capacity to pay. Since the establishment of the scheme there has been a significant improvement in the maintenance of children. For example:

- 75 per cent of liabilities registered with the Child Support Agency (which is located in the Australian Taxation Office) are currently being collected; and
- as at April 1994 the average value of a formula assessment was $51.31 per child per week compared with $43.75 per week for a court assessment.

25. The scheme has been a success, with one of its most successful aspects being the shift in community attitude which it has engineered through enforcing the collection of child support, thereby ensuring parents take responsibility for the support of their children. Another successful feature of the scheme is the right of parents, once the level of liability has been established under the formula, to collect child support privately, without necessitating collection by the Agency.

Health

26. Most young Australians take advantage of the free medical and hospital care offered through Medicare. The Federal Government has also developed policies to deal with health issues that particularly concern young people:

- the Government recently announced a $13 million package to curb the rate of youth suicide;
- the first priority of Health Australia, an $18 million, three-year program announced in the 1995 Budget, is to reduce the deadly impact of tobacco, especially on young people; and

- the Federal Government is acknowledged as a world leader for its National HIV/AIDS Strategy. Australia has been very successful in containing the spread of HIV/AIDS.

Responses to homelessness

27. Efforts have also been made to address the serious problems faced by homeless young people which were identified in the report of the Human Rights and Equal Opportunity Commission, Our Homeless Children, in 1989. This has mainly been achieved through the Youth Social Justice Strategy, a comprehensive package of initiatives for disadvantaged young people. Of particular importance has been the Supported Accommodation Assistance Program (SAAP), a joint Federal-State program which funds crisis accommodation, a range of other accommodation options and related support services for homeless young people. SAAP currently funds about 1,600 services which accommodate between 11,000 and 12,000 people each night. SAAP is supplemented by the Crisis Accommodation Program (CAP). CAP is a Federally-funded capital grants program which enables the purchase or upgrading of properties for use by SAAP service providers.

28. The SAAP legislation and agreements preclude the funding of services exclusively for young people under school leaving age. However, no one in crisis is turned away from a SAAP service because of their age, and individuals under school leaving age may be given temporary accommodation and support through SAAP and assistance to access more appropriate services.

29. A related initiative is Health Services for Homeless Youth which funds organisations to develop and provide innovative health services for 'at risk' and homeless youth. In 1993-94 program activities involved around 30,000 client contacts, a range of education/preventive projects and training programs for health workers. The program is cost-shared with State and Territory Governments.

30. The Federal Government has been working with State and Territory Governments to improve the links between the various income and other support services provided for homeless young people. A Federal, State and Territory Protocol case management program for unsupported homeless young people has been developed to improve coordination of income support (a Federal responsibility) with a full assessment of protective care needs (a State responsibility). Under the Youth Protocol, homeless young people are referred to the State or Territory department of family or community services to receive careful assessment of their needs and other support in a coordinated manner. The majority of young people assisted by this process are under 15 years of age.

31. Homeless young people have very diverse needs which are exacerbated by the duration and nature of their homelessness. As a result, the Federal Government announced in the 1994-95 Budget that 33 Community Services Officers (CSOs) were to be established in 21 locations nationally. The objectives of the CSOs are to:

- provide Department of Social Security services to homeless clients of all ages, and those at risk of homelessness, in order to improve their access to and maintenance of income support;
- reduce the incidence of inadequate or inappropriate payment of income support to clients who have difficulty in accessing or negotiating entitlements via existing Department of Social Security (DSS) service delivery methods; and
- perform outreach functions to community agencies which service homeless and at risk people.

32. As part of the Federal Government's commitment to improving services to young people, 10 Youth Service Units (YSUs) were established throughout Australia in 1994. The primary role of YSUs is to provide young people under 18 years of age with a selected range of services available from the Department of Social Security (DSS) in a manner that young people find approachable, and outreach to locations where young people congregate. YSU staff offer a specialist case management service for those young people, in particular the homeless, who require a more intensive level of assistance.

33. In the 1995 Budget, additional resources were also provided to enable DSS social workers to follow up all those granted income support at the homeless rate, to explore possibilities for family reconciliation and to address needs for support.

34. The Report on Aspects of Youth Homelessness by the House of Representatives Standing Committee on Community Affairs was tabled on 5 June 1995. The Federal Government's response was tabled on 30 November 1995. The Government has welcomed the report as a wide ranging consideration of youth homelessness. Key elements of the Government's response were the general endorsement of the report's emphasis on improving coordination of youth services and on early intervention, particularly through schools, before young people become homeless.

Education, training and employment

35. There has been a near doubling of school retention rates in the last decade. In 1994, 75 per cent of school starters completed the final year of schooling in comparision with 36 per cent in 1982. The Federal Government assists Australia's schools in various ways. It contributes more than $3 billion annually to this end.

36. However, in Australia around 14 per cent of children drop out of school early without going on to further education and training. The Federal Government, concerned about the linkage between lack of education and disadvantage later in life, in 1994 embarked on a process of reform of vocational training in Australia known as the Australian Vocational Training System (AVTS). The Federal Government has doubled spending on vocational education and training since 1990: from $344 million to $780 million. The objective is that by the year 2001, 95 per cent of 19 year olds will have completed Year 12 or an initial post school qualification, or be participating in formally recognised education and training.

37. The Federal Government has a system of income support to ensure equal educational opportunities for students in need. These include AUSTUDY, ABSTUDY and the Assistance for Isolated Children schemes. More than half a million students now receive income support - a fivefold increase from 1983. Children are also financial beneficiaries when their parent (or parents) are able to enter the paid workforce. The Jobs, Education and Training Program (JET), established in 1989, was a major initiative which provides assistance to sole parents to enter or re-enter the workforce by providing work-oriented counselling and training schemes, as well as child care to facilitate access to these services. In 1993-94, 92 per cent of the JET clients who sought assistance with child care were found a child care place.

38. The AVTS is a program of both Federal and State Governments. This system has a number of elements including the agreement of States and Territories to integrate vocational education in the secondary curriculum and expand the number of entry level training places. The Federal Government and States and Territories also agreed to establish the Australian National Training Authority in 1992. A further program is the Youth Training Initiative (YTI) which assists unemployed 15 to 17 year olds, especially early school leavers. It involves intensive individual case management, access to all labour market, vocational training programs and the Youth Training Allowance, which provides income support for young people in approved education, training or job search activities. The Federal Government has allocated $660 million over four years to the YTI.

39. In 1995, the Federal Government, in its 'job pathway guarantee program', allocated $15.5 million over three years to fund brokers to guarantee traineeships and jobs in local industry for students who successfully complete their vocational studies in the final two years of high school. This program will assist young people in obtaining their first job and create greater links between secondary schools and local industry in the creation of post school employment placement options for students.

The job pathway guarantee program is part of Working Nation, a $9 billion program introduced in May 1994.

40. The National Training Wage has been introduced to boost the level of training and work opportunities available. The Federal Government has also expanded the number and variety of traineeships to make them more relevant and attractive to young people. In 1994 apprenticeships and trainee commencements as a proportion of the 15 to 19 year old population were higher than that achieved in any of the previous three decades.

41. One of the Federal Government's most successful training programs has been the Landcare, Environment and Action Program. More than 30,000 unemployed 15 to 20 year olds have been provided with formal training and practical experience on projects of environmental or cultural significance.

42. The Government has established Youth Access Centres (YACs) in more than a hundred locations across Australia. Several mobile YACs operate from four-wheel drive vehicles, caravans and small vans in rural and remote areas. YACs provide information and advice to young people, primarily on employment and education issues, but also on money, accommodation, legal assistance and health problems.

43. The number of 15 to 19 year olds looking for full-time work has fallen from 158,000 in 1983 to 91,400 in September 1995.

44. The Federal Government is committed to expenditure on higher education and spending will reach $16.5 billion over the period 1996 to 1998. The number of students in higher education has grown rapidly from 34,000 in 1982 to over 600,000 in 1995.

45. Finally, in December 1994 a Civics Expert Group established by the Prime Minister described an urgent need for a civics and citizen education program. As a result the Federal Government has committed $25 million over four years to the development of high quality teaching resources and to increase the interest and participation of young people in Australian history and democracy.

Communication

46. The Federal Government is determined to ensure that Australian young people exploit the opportunities offered by the information super highway. In order to give Australian students access to the new technologies the Federal Government has invested initial funding of $1.5 million for the development of the Education Network

Australia (EdNA). EdNA will electronically link schools, Technical and Further Education (TAFE) colleges, universities and other education and training providers across Australian and the world.

47. Over recent years, the Federal Government has established Triple J as the national youth radio network. During 1995-96, the Government will extend Triple J's coverage to a further 25 regions across the continent.

Aboriginal and Torres Strait Islander children

48. Disparity in the level of enjoyment of rights by Aboriginal and Torres Strait Islander children compared to other children is an issue of major concern to Federal and State Governments. A number of initiatives have been taken to address this concern.

49. Of particular importance, in view of concern about the high mortality rates of Aboriginal children, have been Federal and State initiatives in areas relating to the health of women and babies. A wide range of programs has been developed in health and related areas. This has included programs under the National Food and Nutrition Policy, the National Women's Health Program, initiatives in relation to breastfeeding, family planning and birthing services, immunisation programs and strategies to improve water quality, sanitation and housing. Substantially increased funding for Aboriginal and Torres Strait Islander primary health care and environmental health initiatives has also been made available through the 1994-95 and 1995-96 Federal Budgets. This funding will assist in improving indigenous people's access to the range of primary health care and environmental health services mentioned above, including services which assist indigenous children. The 1994-95 budget allocated $449.4 million over five years for this purpose.

50. Under past assimilationist policies many Aboriginal children were forcibly removed from their families. The Federal Government announced in May 1995 that it had requested the Human Rights and Equal Opportunity Commission to conduct an inquiry into:

- the past laws, policies and practices that resulted in the compulsory separation of Aboriginal and Torres Strait Islander children from their families and the effect of those laws, practices and policies;
- the need for any changes in current laws or practices available to Aboriginal and Torres Strait Islanders who were affected by compulsory separation to further the relocation or reunification of families;
- the principles relevant to determining the justification for compensation for persons affected by such separations; and

- the current laws and practices with respect to the placement and care of Aboriginal and Torres Strait Islander children.

51. The inquiry is now underway and will report to the Attorney-General by December 1996.

52. The Federal Government recognises that language is an essential part of a person's identity and is of critical importance in the transmission of culture. The question of the maintenance and preservation of Aboriginal languages was examined comprehensively in 1992 by the House of Representatives Standing Committee on Aboriginal and Islander Affairs in its report Language and Culture - A Matter of Survival. In response to that inquiry the Government funded the Aboriginal Languages Initiatives Program which was introduced as part of the Australian Languages and Literacy Policy 1992.

53. The Training for Aborigines and Torres Strait Islanders Program provides employment assistance to young Aborigines and Torres Strait Islanders. The Federal Government has increased the number of places allocated specifically to Aboriginal and Torres Strait Islander people in mainstream labour market programs to 26,000 places in 1995-96.

54. In order to increase the participation rates of young Aborigines and Torres Strait Islanders in education and training, the Aboriginal Education Program was established in 1990. Under this program, the Federal Government provides supplementary tutorial assistance, and allows schools to offer 'Homework Centres' to students who do not have adequate study centre areas at home. The Federal Government also funds school based committees of parents to run projects which encourage young Aborigines and Torres Strait Islanders to remain in school and participate in education.

Implementation of the Federal Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody

54. The loss of many young lives in custody was one of the most tragic aspects of the Royal Commission's investigations. The Federal Government has responded to the Royal Commission's recommendations in a variety of ways such as action to prevent and counter alcohol and substance abuse. Young Aborigines and Torres Strait Islanders will share many of the overall benefits arising from these responses. There have been other aspects of that response which specifically targeted the needs of young people. These included funding for:

- supervised Youth Bail Hostels as an alternative to police custody ($7 million);

- a Young Person's Employment Program to provide work placements within Aboriginal organisations and linked to TAFE training ($22 million);
- a Young People's Development Program to encourage planned community action to meet youth needs, through such measures as employment of community youth workers, cultural education by elders, and assistance to young people to move from detention or institutions back into the community ($23 million);
- an Aboriginal Youth Sport and Recreation program ($9 million); and
- additional Aboriginal Education Workers in schools ($20 million).

Aboriginal Justice Advisory Committee

55. The Federal Government announced in May 1995 the establishment of a National Aboriginal Justice Advisory Committee. The Committee will provide a mechanism for representatives of State and Territory Aboriginal Justice Advisory Committees to meet in a regular national forum. These Committees were formed as part of the implementation of the Royal Commission into Aboriginal Deaths in Custody recommendations. The role of these committees is to provide Governments with independent advice on Aboriginal perceptions of criminal justice matters and on the implementation of the recommendations of the Royal Commission.

56. Young Aborigines and Torres Strait Islanders have been identified as a priority group under the Federal Government's Youth Social Justice Strategy, which aims to provide a coordinated approach to the needs of disadvantaged young Australians generally. As an example of the significance to indigenous people of programs conducted under the Strategy, Aboriginal and Torres Strait Islander young people comprised 18 per cent of those assisted by Youth Access Centres during 1993.

Young people with a disability

57. During 1993-94 the first stage commenced in the development of an information package for young people with a disability, and parents and carers of children with a disability. The objective is to provide a Families Kit containing information on all Federally funded programs and services which are available to assist these groups to enter or re-enter the workforce.

58. Young people with a disability who are making the transition from school to work were a priority group for access to 4,000 new employment places established between 1991-94 under the Disability Reform Package.

59. In January 1994 the Jobnet pilot program commenced. The program is designed to test mechanisms for providing work skills for young people with an intellectual

disability. There are 15 Jobnet outlets around Australia. The program has a target of 1,200 clients by 20 June 1995.

60. Increased funding for disability programs was announced in the 1995-96 Federal budget, enabling an expansion in employment opportunities, including a two-year pilot program for 500 people with severe disabilities who require a more intensive and flexible service, and in hearing services.

Responses to mental illness

61. Mental illness was identified as a major but largely unrecognised problem among children and young people in the report Human Rights and Mental Illness released by the Human Rights and Equal Opportunity Commission in 1993. In response to one of the major problems identified in the report - youth suicide - it was announced in the 1995-96 Federal Budget that an additional $7 million would be provided over four years to 'urgently reduce the high levels of suicide among young people'. This is additional to $6 million earmarked from the National Mental Health Strategy funding for the same purpose. The funding will be used to investigate the causes behind youth suicide, establish suicide awareness programs and train health professionals, particularly in rural and remote areas.

62. State and Territory initiatives will also be significant in addressing the problems faced by children with mental illness.

Child abuse and neglect

63. Agreement has been reached by the Federal, State and Territory Governments to implement and fund the National Prevention Strategy for Child Abuse and Neglect. Funding of $12 million over four years was announced in the 1994-95 Federal Budget to implement the Commonwealth aspects of the Strategy. State and Territory Governments are also contributing funding to the implementation of the Strategy.

Legal issues and law reform

64. The Crimes (Child Sex Tourism) Amendment Act 1994 came into effect on 5 July 1994. This legislation was enacted in response to the recommendations of the United Nations Special Rapporteur of the Program for the Prevention of the Sale of Children. The legislation creates criminal offences dealing with:

- sexual relations between adults and children, applying to Australian nationals or residents overseas; and
- associated paedophile activities within Australia such as the organisation and promotion of child sex tourism.

65. The Federal Government has introduced amendments to the Family Law legislation to direct the focus to the rights of the child. The existing concepts of custody and access are to be replaced by provisions which give parents parental responsibility, defined as the duties, powers, responsibilities and authority which by law parents and guardians have in relation to children. The concept of custody has carried with it notions of ownership of children and, in some cases, has tended to lead to the belief that the child is a possession of the parent who is granted custody. The proposed amendments emphasise that children have the right to know, and be cared for by both parents and that parents share the duties and responsibilities concerning the care, welfare and development of the child.

66. In recognition of Australia's obligations to protect children in their dealings with the justice system the Federal Attorney-General has announced that the Federal Government will make a reference to the Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission to examine and report on children and young people and the legal process. In particular the Commissions are to inquire and report on:

- legal advice and access for children and young people and their legal representation before courts and tribunals in the exercise of Federal jurisdiction;
- the appropriateness of procedures for pre-trial investigation and taking of evidence from children and young people;
- the appropriateness of rules of evidence for, and procedures for taking evidence in courts and tribunals from children and young people;
- the question of the desirability of children giving evidence in family law and associated proceedings and the appropriate safeguards in such circumstances;
- sentencing of children and young people for Federal offences;
- the treatment of children and young people convicted of Federal offences;
- advocacy of the interests of children and young people before courts and tribunals;
- the appropriateness and effectiveness of the legal process in protecting children and young people as consumers;
- the particular needs in these and related areas of children and young people for whom the Federal Government has a special responsibility; and
- any related matters of particular relevance to Australia's remote communities.

67. Among the matters to which the Commissions are to have regard in performing their functions are the Federal Government's special responsibilities for children arising under the Constitution and Australia's international human rights obligations,

particularly under the Convention on the Rights of the Child. Consultations will be held with the Australian community and relevant bodies.

68. The Federal Government is continuing to implement ILO Convention 156 Workers with Family Responsibilities. The Sex Discrimination Act 1984 already prohibits discrimination on the ground of family responsibilities in relation to termination of employment. The current definition of 'family responsibilities' includes 'dependent child' - a child who is wholly or substantially dependent on the employee.

Access to justice

69. The Prime Minister launched the Federal Government's Justice Statement in May 1995. The Statement makes a strong commitment to the importance of families in Australian society. Currently the Government commits over $21 million every year to more than 60 community-based family support organisations. Around 150,000 clients are assisted annually through marriage/relationship counselling and education, skills training for family relationships and mediation within families facing difficulties, particularly to assist with adolescent crises. Among the new or expanded initiatives announced in the Statement were the following:

- family skills training programs for parents using these Centres;
- funding for specialist workers in children's and youth law to assist community legal centres to meet the demand for advice and advocacy for children and young people;
- increased funding for marriage and relationship preparation and measures to extend access to a range of family support services, particularly for people in regional and rural areas and for people of non-English speaking backgrounds;
- increased family mediation and Family Court counselling services;
- a national handover pilot program, Handover and Visiting Centres, for safe transfer of children between separated parents where there is a background of conflict or the risk of abduction, violence or other abuse;
- a research project to examine the level of unmet demand for court interpreters by people of non-English speaking backgrounds and develop strategies for increasing access to interpreting services;
- a national pilot program of specialist training courses for ethnic language interpreters in the legal system;
- programs to train court interpreters in Aboriginal languages;
- professional development programs to assist judges, tribunal members and court staff in working with interpreters; and
- an expanded network of women's legal centres to ensure that the needs of women, and indirectly children, are met in every State and Territory.

70. Children will also be assisted in the exercise of their rights through the establishment of a Discrimination and Human Rights Law Centre. The Centre will service a wide range of clients across a variety of areas of discrimination and human rights law.

71. Australia has also played a leading role in the development of an Optional Protocol to the Convention on the Rights of the Child, aimed at strengthening mechanisms to help combat child prostitution and other forms of abuse and exploitation. Australia has also been active in promoting the development of the Optional Protocol at various international meetings.

Refugee minors without parents in Australia

72. Under the Immigration (Guardianship of Children) Act 1946 the Minister for Immigration and Ethnic Affairs is the legal guardian of children who enter Australia with no close family relatives in Australia, that is, who are unattached refugee minors. The Minister has delegated his or her powers under the Act to the senior State officials responsible for child welfare. Federal-State cost-sharing arrangements operate on a dollar-for-dollar basis with participating States. State child welfare workers provide counselling and settlement support to all unaccompanied minors and their caregivers to prevent breakdown in care arrangements - until the minors reach 18 years of age. All refugee minors without parents in Australia are so covered.

73. A national review of the program, a program that has now been in place for some 10 years, was completed in 1994. The number of minors had declined steadily over recent years, a trend thought likely to continue. The view had been that numbers could reach a level where cost-sharing was no longer viable in smaller States. The recommendations of the review, which were all adopted, are expected to strengthen the care environment of these minors and to enhance the scheme's continuing viability in smaller States. Federal Government payments to States were enhanced to an agreed ratio of one case worker to 25 minors (previously one case worker to 45 minors). Entitlement per worker equates to 50 per cent of salary plus one third of salary-related on-costs.

74. Recognising that unaccompanied refugee minors could be regarded as among the most vulnerable children in Australia, the review specifically took note of the Convention on the Rights of the Child. Implementation of the Review's recommendations, which is currently occurring, will ensure that these minors are not disadvantaged with respect to other residents in comparable circumstances.

State and Territory initiatives

75. In all States and Territories all relevant Government agencies received copies of the Convention and have examined the implications of the Convention for their legislation, policy and practice.

76. In the Australian Capital Territory, a number of laws have been passed since the signing of the Convention which have helped to bring the Australian Capital Territory into line with the provisions of the Convention or to make its compliance more effective. These laws include amendments to the Children's Services Act 1986, the Community Advocate Act 1991 (amended in 1994) relating to applications to the courts for Child in Need of Care orders; the Adoption Act 1993; amendments to the Crimes Act 1900 concerning child sexual offences; and liberalising a procedure whereby children may give evidence in court via closed circuit television.

77. The New South Wales Department of Community Services undertook an examination of some current statutes which established that New South Wales law is broadly in line with the Convention.

78. Since 1994, a Northern Territory wide conference is held annually to raise issues regarding the operation of the juvenile justice system and other matters relevant to juveniles. There is Government and community participation in the workshops, including representatives from the Departments of Law, Education, Police, Health and Community Services and Family Youth and Children's Services. A working group is established after each conference to examine the implementation of the recommendations that come from the conference to ensure that the Government is responsive to current issues relating to children in the Territory.

79. In 1989 there was an examination of current statutes by the Queensland Attorney-General's Department which established that present law in Queensland was also broadly in line with the Convention. A State Youth Conference was held in December 1990. Attended by over 280 workers from Government and non-Government organisations, it was the most significant conference of its kind in Queensland for many years. The Queensland Government has also developed a Youth policy.

80. In November 1990 the South Australian Health Commission endorsed a policy statement on Child Health. The policy goals and principles are derived directly from the Convention. A Children's Interests Bureau has been set up by the South Australian Government to look after and monitor children's interests in the State.

81. In Tasmania child welfare and juvenile justice were reviewed using the Convention as a framework. As a result of the review, legislation is being drafted to update laws in the light of the Convention and relevant Commonwealth Legislation. The proposed legislation will be made available for public comment.

82. All relevant Victorian Government departments have examined the implications of the Convention for their legislation, policy and practice. Regular monitoring of program performance is undertaken by each department. Departments have contacted key non-Government agencies and advisory bodies with which they work closely and made them aware of the Convention. Those organisations include advisory bodies to Government, such as the Victorian Family and Children's Services Council, the Victorian Ethnic Affairs Commission, the Youth Policy Development Council, local Government and community youth sector agencies, the Brosnan Centre (which provides services to young offenders), and health agencies.

83. In Western Australia between 1988 and 1991 the Department of Community Development conducted a review of the Community Services Act 1972, Child Welfare Act 1947, Adoption of Children Act 1986 and the Welfare and Assistance Act 1961. The Convention on the Rights of the Child was considered, among other things, during that review. In 1994 the Adoption of Children Act 1986 was replaced by the Adoption Act 1994. The Department is currently considering replacing the three remaining Acts with one consolidated statute.

(b) Existing or planned mechanisms for coordinating policies relating to children and for monitoring the implementation of the Convention

84. A wide range of Government bodies have responsibilities relating to children and implementation of the Convention. In the Federal sphere, the Government departments and agencies with major responsibilities for policies and programs relating to children are the Department of Human Services and Health, the Department of Employment, Education and Training, the Department of Social Security and the Aboriginal and Torres Strait Islander Commission. Many others play an important role in their areas of responsibility, be it justice, immigration and ethnic affairs or environment. In the States and Territories, a similarly wide range of Government agencies has an impact on children, but of particular importance are bodies with responsibility for community services, health, education and juvenile justice.

85. The Federal nature of Australia's political system requires a considerable degree of cooperation between authorities at all levels (including Local Government

Authorities) if consistent and equitable approaches are to be taken to ensuring that the best interests of children are addressed in all areas of Government activity. In 1993 the Australian Youth Policy: A Statement of Principles and Objectives was endorsed by the then State, Territory and Federal Youth Ministers in recognition of the need of a holistic policy framework across government agencies and the community to successfully address the often complex and diverse needs of young people.

86. The National Youth Policy states that the development and implementation of youth policy and programs should be based on the principles of equity, participation and access and sets out national objectives on matters including additional assistance for disadvantaged young people, education, employment, environment, family, health, housing and accommodation, income support, information, justice, sporting, recreational and cultural needs, transport, and vocational education and training.

87. Due to the degree of cooperation required between authorities in Australia's Federal system there exists a range of national coordinating and research-oriented bodies which have responsibilities in this area.

Australian Youth Policy Action Coalition (AYPAC)

88. AYPAC is the peak body representing the interests of young people and non-government youth organisations across Australia. It was established in 1991 and replaced the Youth Affairs Council of Australia which was established by the Youth Ministers' Council in 1985.

89. The Federal Government provides AYPAC with core funding and this year agreed to a triennial funding basis. In 1995-96 core funding of $338,000 was provided. Additional funding has been provided upon request for particular projects.

90. AYPAC has a national representative board of 17 organisations and an independent chairperson. A structure has been adopted to ensure that each State and Territory is represented. Its objectives include promotion and support programs for the elimination of poverty; to promote cultural, social, economic, political and spiritual interests and participation of young people in all aspects of Australian society especially disadvantaged youth; and to advocate for, assist and support development of policy.

Australian Youth Foundation (AYF)

91. AYF is an important legacy of the Bicentenary. It was established with a grant of $10 million from the Australian Bicentennial Authority as announced by the Prime

Minister in 1988. Additional endowments of $2.4 million and a further $1 million for multi-cultural youth projects have been made. The Foundation exists in perpetuity and its endowment is held in trust and must be maintained for future generations also. Income received from the investment of the endowment is used to index the initial fund to maintain its real dollar value; disburse grants; and provide the means whereby funds can be properly managed.

92. The AYF was incorporated as an independent foundation in 1989. It is an autonomous non-government organisation with a charter to 'assist young Australians who are socially, financially, physically, or intellectually disadvantaged to reach their full potential'.

World Declaration on the Survival, Protection and Development of Children

93. Australia ratified the World Declaration on the Survival, Protection and Development of Children in May 1991. The Plan of Action for Implementing the World Declaration committed Australia to the development of a national program of action. In order to develop a program which was relevant in the Australian context, the Federal Government consulted widely with State and Territory Governments, community groups and non-Government organisations. Australia's National Program of Action, Our Children, Our Future, was then prepared by the Department of Human Services and Health and was published in 1994. The Program is the first stage in Australia's response to the World Declaration.

94. The Program of Action provides a detailed overview of current strategies and initiatives at both Federal and State Government levels and includes health goals and targets in relation to Aboriginal and Torres Strait Islander people, women's health and education, food and nutrition, child health, water and sanitation, basic education, and children in difficult circumstances. The Program of Action draws together the issues and discusses a possible agenda for action for children for the 1990s.

95. Developing the National Program of Action has provided an invaluable opportunity to work across public and private sector boundaries and to develop a comprehensive picture of programs and services for children from a variety of perspectives. This approach has made it clear that not all Australian children in need of help are receiving it. The National Program of Action and the Report on the Convention on the Rights of the Child will provide a basis for continuing consultations between Government and non-government organisations. Efforts will be made in policy development to pursue stronger links between the Convention and the World

Declaration which together form Australia's two major international commitments to children.

Standing Committee of Attorneys-General

96. The body principally responsible for achieving harmony of Federal, State and Territory laws in relation to the court system and in many broader areas affecting access to justice is the Standing Committee of Attorneys-General (SCAG), which has operated since 1961 and meets several times a year. This body has played an important role, for example in the areas of domestic violence, cross-vesting legislation (which has reduced jurisdictional conflicts between courts), female genital mutilation and child sex tourism legislation. Human rights matters are a standing item on the agenda of SCAG. This provides an opportunity for the State and Federal Government Attorneys-General to discuss issues of compliance with and implementation of obligations arising under the UN Convention on the Rights of the Child.

97. The Access to Justice Advisory Committee, established jointly by the Federal Attorney-General and the Minister for Justice, in its Report of April 1994, considered it important that there should be an adequate mechanism to address the problems created by lack of harmony of laws throughout Australia. The Committee concluded that the best approach in the Australian federation was to endorse the continued role of SCAG, but to encourage it to commit itself more vigorously to the task of harmonisation in areas of particular significance to access to justice.

National Health Policy for Children and Young People

98. The Australian Health Ministers endorsed the National Health Policy for Children and Young People in June 1995.

99. The National Health Policy was prepared by a national working party composed of representatives of the Commonwealth, State and Territory Governments, the National Health and Medical Research Council, the Aboriginal and Torres Strait Islander Commission and consumer groups. As part of the policy development work, consultations were undertaken during 1994 with key stakeholders, service providers, families, young people and children's advocates in every State and Territory.

100. The National Health Policy sets out principles and key areas for coordinated, national action across the health system to further the policy aim of promoting, maintaining and improving the health of young Australians throughout the development years of childhood, adolescence and later teens.

101. It includes strategies to enhance the awareness in the community and at all levels of government of the health needs of young Australians and for this awareness to be reflected in policies, programs and services that impact on the health of children and young people.

102. An implementation plan is now being drafted by the working party to address the key action areas in the Policy. This plan will be considered by the Australian Health Ministers in the later part of 1995.

National Council of Community Child Health

103. The National Council of Community Child Health was established in November 1993 with representatives of child health managers from each State and Territory. Some of its objectives are to exchange information about services and to develop consistent policies and practices. The Council has supported joint national projects and reviews.

Standing Committee of Social Welfare Administrators

104. A number of State and Territory Government departments are members of the Standing Committee of Social Welfare Administrators which meets biannually and co-ordinates policies relating to children and social welfare. The Standing Committee assists in monitoring the implementation of the Convention. It works towards implementing consistent legislation, policies and practices affecting children.

National Health and Medical Research Council

105. The role of the National Health and Medical Research Council (the NHMRC) is to advise and make recommendations to the Federal, State and Territory Governments and to the Australian community on matters relating to the improvement of health; the prevention of disease; health care; medical care; dental care, health and medical research; and ethical issues in relation to health.

106. Following the Bienenstock review and the restructure of the NHMRC, the new National Health Advisory Committee has taken on the role of addressing issues relevant to child health in Australia. NHAC has identified a number of priority child health issues and working parties are currently being established to develop guidelines on the use of R(h)D Immunoglobulin (Anti-D); paediatric heart transplantation; prevention of pertussis; child sexual abuse; injury prevention programs; attention deficit hyperactive disorder; and pre-term births.

107. Also of relevance to the health of children is the work of the Women's Health Committee which currently includes the following expert panels/working parties: the Maternal Mortality Working Party, the Options for Effective Care in Childbirth Expert Panel, and the Working Party on the Long Term Effects on Women from Assisted Conception.

National Child Protection Council

108. The National Child Protection Council was established to focus the attention of Governments and the community on the need to reduce the incidence of child abuse and neglect. Commonwealth, State and Territory Governments are responsible for implementing the National Prevention Strategy for Child Abuse and Neglect under the auspices of the National Child Protection Council. The Council's secretariat is located in the Department of Human Services and Health.

Australian Institute of Health and Welfare

109. The Institute was established in 1987 with a mandate to focus on health-related research and recommendations. The Institute's mandate now includes the collation, analysis and dissemination of national data relating to welfare services including child care and child welfare services. It also seeks to improve the quality of data in these areas in the longer term.

MCEETYA

110. The Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) which is made up of all State, Territory and Federal Government Ministers of Education has agreed upon a list of 10 common national goals for Australian education. The document, known as the Hobart Declaration on Schooling in Australia, reinforces the aims of the Convention. Its goals include the provision of an excellent education for all young people, being one which develops their talents and capacities to full potential, and is relevant to the social, cultural and economic needs of the nation.

The Australian Institute of Family Studies

111. The Institute was established in 1980 and aims to promote the identification and understanding of factors affecting marital and family stability in Australia. Recent research projects undertaken by the Institute of relevance to children include studies covering literacy, the use of child-health services, homelessness, changing family structures brought about by parental separation and remarriage, child support law and practice, youth mediation, and living standards.

National Youth Affairs Research Scheme

112. The Scheme was established in 1985 to facilitate nationally-based research into current social, political and economic factors affecting young people and to provide information to assist with the formulation and assessment of policy development and implementation by Federal, State and Territory Ministers responsible for youth affairs. Research projects have covered the mental health of young people, young people as victims of violence, the health of young Aboriginal people and a range of other issues.

Australian Institute of Criminology

113. The Australian Institute of Criminology also carries out research into legal issues of relevance to children and young people. Recent examples of its work include the compilation of statistics on juveniles in detention, and the organisation in 1994, in conjunction with the Juvenile Justice Advisory Council of New South Wales, of a conference on preventing youth crime.

(c) Publicising the Convention

114. On 13 January 1993 the Convention on the Rights of the Child was declared to be an international instrument relating to human rights for the purposes of the Human Rights and Equal Opportunity Commission Act 1986. In addition to inquiring into whether Federal acts and practices and Federal legislation are inconsistent or contrary to any human rights (including the rights recognised in the Convention), it is the role of the Human Rights and Equal Opportunity Commission to conduct research and educational programs to promote understanding and acceptance of these rights.

115. In May 1989 the Commission and UNICEF Australia issued a briefing kit on the Convention. Other publicity undertaken by the Commission included providing speakers for community groups and writing articles and letters about the Convention for journals and newspapers. In July 1991 the Commission conducted a national seminar on the Convention, in conjunction with the Australian National University and the Australian Council of Social Services. The proceedings were subsequently published (Alston and Brennan eds, The Children's Convention and Australia, 1991). The Human Rights Commissioner was involved in planning for the First World Congress on Family Law and Children's Rights which was held in Sydney, Australia in July 1993. In 1994 the LAWASIA Children's Trust was launched with the contribution of $125,000 from the proceedings of the congress. The object of the Trust is to support processes to implement and give effect to the UN Convention on the Rights of the Child.

116. Australia released a National Action Plan on Human Rights in 1994 in response to the World Conference on Human Rights which was held in Vienna in 1993. Among the issues addressed in the plan was the protection of the rights of children.

117. In November 1994 the Joint Standing Committee on Foreign Affairs, Defence and Trade issued A Review of Australia's Efforts to Promote and Protect Human Rights. Issues discussed in the chapter Protecting the Rights of Children included the Children's Convention, Aboriginal and Torres Strait Islander children, juvenile justice and asylum seekers - children in detention. The Human Rights Manual published by the Department of Foreign Affairs and Trade in 1993 includes sections on the UN Committee on the Rights of the Child and on children's rights in Australia.

118. Initiatives have also been taken by State Government bodies to publicise the Convention. The New South Wales Health Department undertook various measures to publicise the Convention. In Victoria the Department of Health and Community Services assisted Save the Children Victoria, UNICEF and the National Association for the Prevention of Child Abuse and Neglect in arranging a seminar in August 1991 to discuss the implications of the Convention for Victoria. The seminar was attended by representatives from Government and non-Government agencies and individual members of the public. In South Australia the Children's Interests Bureau has been instrumental in disseminating information about the Convention to the public and professionals and has done this by distributing copies of the Convention, preparing explanatory information and discussing the Convention in the media. A national seminar on the Convention was organised by the Bureau in February 1992 and the proceedings were published in 1993 (The UN Convention on the Rights of the Child Implementation in Australia).

119. Many non-government organisations also indicated their support for the Convention, strongly promoted its ratification and have continued to be actively involved in children's issues.

(d) Dissemination of the report

120. Australia's Report on the Convention on the Rights of the Child will be tabled in the Federal Parliament and copies will be sent to Federal, State and Territory Government agencies and to non-government organisations. The UN Summary Record of the Report's Examination will also be tabled in the Federal Parliament.

B. DEFINITION OF THE CHILD IN LAWS AND REGULATIONS

Article 1

> ***For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.***

(a) Age of majority

121. In all States and Territories the age of majority is 18. Under the Federal Marriage Act 1961, the legal minimum age for marriage is 18 years. However, with court approval in exceptional circumstances, a marriage may take place if one of the parties has attained 16 years.

(b) Medical treatment

122. The common law in Australia on legal competence to consent to medical procedures on children under 18 years of age can be summarised as follows. In general, children can consent to certain kinds of medical procedures where they are sufficiently mature to make decisions concerning their own medical treatment (under the principle adopted by the House of Lords in Gillick v West Norfolk and Wisbech Area Health Authority [1986] AC 112). Where a child is incapable of giving valid consent to medical treatment, parents or guardians who have the primary responsibility for the child's welfare may in a wide range of circumstances consent to medical treatment of their minor child.

123. Tasmania has introduced into Parliament the Guardianship and Administration Bill 1995. The Bill regularises the law with regard to consent to medical treatment for all persons who do not have the capacity to give such consent. The Bill enables a person responsible for a person with a disability to consent to medical or dental treatment on that person's behalf if the person with a disability is incapable of giving informed consent and if the proposed treatment is not 'special treatment'. Special treatment is defined to include sterilisation, termination of pregnancies, and removal of non-regenerative tissue for the purposes of transplantation.

124. If the person is under the age of 18 years and is unmarried, then the 'person responsible' is that person's parent. If the person under the age of 18 years is married, then the 'person' responsible is the spouse.

125. In South Australia the Consent to Medical and Dental Procedures Act 1985 provides that a minor over the age of 16 has the same capacity as an adult to consent to medical or dental procedures. The consent of a minor under the age of 16 has the same effect as if the minor were of full age where, in the opinion of two medical practitioners or dentists, the minor is capable of understanding the nature and consequences of the procedure and the procedure is in the best interests of the health and well-being of the minor.

126. In the Northern Territory, the Emergency Medical Operations Act 1973 provides that a medical practitioner may perform an operation on a patient who is a minor, without consent, if the medical practitioner and at least one other medical practitioner are of the opinion that the patient is in danger of dying or of suffering a serious permanent disability, and the performance of an operation on the patient is desirable to prevent that death or the occurrence of the disability.

127. The Act provides that a medical practitioner is not entitled to perform an operation on an infant unless the practitioner is satisfied that it is not practical to delay the operation until the consent of a parent or guardian or the next of kin is obtained, or the parent or guardian of the infant or the next of kin has failed to give consent.

128. There is strong judicial authority and a variety of State measures which protect disabled children, particularly in relation to sterilisation. This issue is addressed further in Part F(b), Basic health and welfare, Disabled children, below.

(c) Legal counselling/advice

129. In New South Wales a minor can seek legal advice from a solicitor without parental consent. In Victoria, the Australian Capital Territory, the Northern Territory and South Australia any young person, including a young person under guardianship orders, may seek legal advice without parental consent, regardless of age. In Western Australia there is no specific age set in legislation at the present time. Legal decisions indicate that once a child has reached an age of discretion, that is, around 14 to 16 years of age, and can demonstrate that he or she is capable of making mature decisions, then legal counselling without parental consent is permitted.

(d) End of compulsory education

130. In all States and Territories except Tasmania education is compulsory for children between the ages of six and 15 years. In Tasmania education is compulsory for children between the ages of six and 16 years. Exceptions to this include where

the child or parent is ill, the child is satisfactorily educated at home, or where special psychiatric treatment is required and it is deemed to be in the best interests of the child to be exempt from school attendance. Further information regarding this issue is provided in Part G (a), Education, leisure and cultural activities, Education, including vocational training and guidance, below.

(e) Employment

131. Australia has ratified the following International Labour Organisation (ILO) Conventions concerning minimum age:

- No. 7 Minimum Age (Sea) 1920
- No. 10 Minimum Age (Agriculture) 1921
- No. 15 Minimum Age (Trimmers and Stokers) 1921
- No. 58 Minimum Age (Sea) Revised 1936
- No. 112 Minimum Age (Fishermen) 1959
- No. 123 Minimum Age (Underground Work) 1965

132. All States and Territories have legislation which regulates the employment of children. This issue is discussed further in Part H(c), Children in situations of exploitation, Economic exploitation, including child labour, below.

(f) Sexual consent

133. In the Australian Capital Territory the age of consent for heterosexual and homosexual intercourse has been indirectly set at 16 years. The Crimes Act 1990 provides that it is an offence for a person to engage in sexual intercourse with another person under the age of 16 years. In New South Wales and Queensland the legal minimum age of consent is 16 years for heterosexual sex and 18 years for homosexual sex. In New South Wales a prosecution for an offence for homosexual intercourse with a male under the age of 18 years cannot be commenced where the accused was at the time of the alleged offence under the age of 18 years, without the sanction of the Attorney-General. The age of sexual consent for a female in the Northern Territory has been indirectly set by the Criminal Code at 16 years. The Criminal Code does not provide for an age of consent for homosexual intercourse, except to make it an offence for males under the age of 18 years to have sexual intercourse or commit any act of gross indecency in private. Once a male has attained the age of 18 years an offence is only committed when it occurs in public.

134. In South Australia the age of consent for heterosexual and homosexual sex is 17 years. In Tasmania the age of consent is 17 years for heterosexual sex. However, the consent of a person against whom a crime is alleged to have been committed is a defence to a charge of unlawful intercourse with a young person under the age of 17 years if at the time when the crime was alleged to have been committed:

- that person was of or above the age of 15 years and the accused person was not more than five years older than that person; or
- that person was of or above the age of 12 years and the accused person was not more than three years older than that person.

135. In Victoria the law does not provide an age of consent for heterosexual or homosexual sex as such, but the Crimes Act 1958 provides a series of offences where sexual penetration occurs with a child between 10 and 16 years. There is no offence of sexual penetration with children of 16 or 17 years, except where a person is in a position of care, supervision or authority over the child. Under Western Australia's Criminal Code a child under 13 is incapable of consenting to an act which constitutes a sexual offence against that child. Consent is also irrelevant in the commission of sexual offences against a child under 16 years of age. The age of consent for homosexual sex is set at 21 years.

136. The Federal Human Rights (Sexual Conduct) Act 1994 protects consenting persons over the age of 18 years who are acting in private from arbitrary interferences with their private sexual life. The Act relies on Article 17 of the International Covenant on Civil and Political Rights.

(g) Voluntarily giving evidence in court

137. In the Australian Capital Territory, 'the general rule is that a witness who gives evidence in court must do so on oath or affirmation'. In an exception to this rule which is partly directed towards children, a person may give unsworn evidence if:

- the court is satisfied that the person understands the difference between the truth and a lie;
- if the court tells the person that it is important to tell the truth; and
- if the person indicates that he or she will not tell lies in the proceedings (Commonwealth Evidence Act 1995, which applies in the Territory).

138. Under the Evidence (Closed-circuit Television) Act 1991, it is the general rule that a child who gives evidence in court, other than a child defendant, does so by closed circuit television from a place outside the courtroom. The object of this legislation is to protect the child from suffering mental or emotional harm that could

result if he or she were required to give evidence in the ordinary way. The exclusion of child defendants from giving evidence by closed circuit television will be reviewed.

139. In the Northern Territory children are subject to the same rules of evidence as adults. The Oaths Act 1939 provides that where a witness seems incapable of comprehending the nature of an oath the court may allow the witness to give evidence in any manner the court thinks fit provided the court is satisfied that the witness understands that he or she will be liable to punishment if his or her evidence is false. The Tanami Network is used to take evidence by electronic means where witnesses are unable to attend court.

140. In New South Wales the Oaths Act 1900 provides that a child's evidence will not be allowed if the court is satisfied that the child does not understand the difference between a truth and a lie, and the child is not able to respond rationally to a question.

141. In Queensland, section 9 of the Evidence Act 1977 permits a child to give evidence where, even though the child does not understand the nature of an oath, a court is satisfied the child has sufficient intelligence to give reliable evidence. Under section 9A expert evidence can be given as to whether a child under 12 has sufficient intelligence to give reliable evidence. Section 21A provides for the receipt of evidence by a child under 12, among others, in a number of special ways (for example, by closed circuit television).

142. In Tasmania a witness of any age can be subpoenaed. The Evidence Act 1910 provides that if a child does not understand the nature of an oath, the child's evidence may still be received if the child is of sufficient intelligence to justify the reception of the evidence and understands the need to tell the truth.

143. Tasmania has introduced the Evidence Amendment (Children as Special Witnesses) Bill 1995, which, inter alia, changes the law in relation to the giving of evidence by children. The Bill introduces a two stage competency test for the sworn evidence of a child under the age of 14 years. Such a child will be able to give sworn evidence if a judge or person acting judicially is satisfied that the child:

- understands that he or she has an obligation to tell the truth that is over and above the ordinary duty to tell the truth; and
- can understand and respond rationally to questions which are put to the child in a manner and language appropriate to the age and understanding of the child.

144. In Victoria, the Evidence Act 1958 provides that children under the age of 14 years may give evidence on oath. If in the opinion of the court they do not understand the nature of an oath, they may give unsworn evidence provided it appears to the

Court they understand the duty of telling the truth and are capable of responding rationally to questions about the facts in issue. The requirement for any such evidence to be corroborated was abolished by the Crimes (Sexual Offences) Act 1991.

145. In proceedings which relate to a charge for a sexual offence or an indictable offence which involves an assault or injury, or threat of injury to a person under the age of 18 years of age, the Act provides for a party to apply, or a Court of its own motion to direct, that alternative arrangements be made for the child to give evidence. This includes the use of closed circuit television or other facilities that enable the child to give evidence from a place outside the court room. It also provides for the use of screens to remove the defendant from the child's line of vision as well as provisions in relation to Counsel's dress and persons permitted in the court while the child is giving evidence to make the court experience less intimidating.

146. The Act also provides for the use of video or audio recordings of a child's evidence-in-chief in the above proceedings. The court may rule as inadmissible the whole or any part of the contents of a recording.

147. In Western Australia any person can voluntarily give evidence in court provided he or she can understand the nature of the obligation to tell the truth imposed by oath or affirmation. The evidence of any child may be received if in the opinion of the court the child is possessed of sufficient intelligence to justify the acceptance of the evidence and understands the duty to speak the truth. There is now no longer a requirement that the evidence of a child be corroborated (section 101(2) of the Evidence Act 1906 was repealed by Act no 36 of 1992).

148. The Acts Amendment (Evidence of children and Others) Act 1992 amended the Evidence Act 1906 to provide for children to give evidence via closed circuit television (CCTV) or to be shielded by opaque screens. The purpose of the Act is to reduce the trauma of giving evidence in open court for children. Under the legislation children giving evidence about alleged assaults on them will automatically use CCTV or screens. Unlike other States the prosecutor does not need to convince the court that a witness should have the protection of a CCTV or screens. The courts have instituted a scheme where a court officer assists child witnesses who are required to give evidence by way of CCTV. The appointed court officer is available to assist the child during the proceedings and is also available before the trial to participate in any familiarisation visits to the courts which the Crown wishes to conduct.

149. In South Australia the Evidence Act 1929 provides that children may give sworn evidence in the same way as adults, provided the child understands the obligation of

an oath. If the child does not understand the obligation of an oath but appears to the judge to have reached a level of cognitive development that enables the child to understand and respond rationally to questions, and to give an intelligible account of his or her experience, and the child promises to tell the truth and appears to understand the obligations entailed by that promise, the unsworn evidence is treated in the same way as sworn evidence. Where the child's evidence is not treated in the same way as sworn evidence the child's evidence is assessed in the light of his or her cognitive development and requires corroboration.

(h) Criminal liability

150. At present the age of criminal responsibility for Federal offences varies from seven to 10 years as State and Territory laws are applied. Under a Model Criminal Code currently being developed for application in all jurisdictions the age will be standardised at 10 years or more; this will become law in relation to Federal offences on 16 September 1995 when new provisions based on the Code come into effect. Further, a child over 10 years but under 14 years can only be criminally responsible for an offence if the child knows that his or her conduct is wrong. The question of whether a child knows that his or her conduct is wrong is one of fact and the burden of proving this is on the prosecution.

151. In the Australian Capital Territory a child who has not attained the age of eight years is presumed to be incapable of committing an offence. Where a child is between the age of eight and 14 there is a rebuttable presumption that the child is incapable of committing an offence because she or he did not have the capacity to know that the particular act or omission was wrong.

152. In New South Wales, the Northern Territory, Queensland and Western Australia, a child under the age of 10 years is not criminally responsible for any act or omission. A child between the ages of 10 to 14 years is not criminally responsible for an act or omission unless it is proved that at the time of doing the act or making the omission he or she had the capacity to know that the activity in question was wrong at the time of the commission of the offence.

153. In Victoria the Children and Young Persons Act 1989 provides a minimum age of 10 years for criminal liability. A charge in respect of a child aged 10 to 16, other than for homicide and some other indictable offences, must be heard in the Criminal Division of the Children's Court.

154. The age of criminal liability in South Australia is 10 years under the Young Offenders Act 1993.

155. In Tasmania under current legislation the minimum age at which a child can be charged with an offence is seven years. From the seventeenth birthday onwards the law treats an offender as an adult.

(i) Deprivation of liberty and imprisonment

156. The Federal Crimes Act 1914 provides that when a child is charged with a Federal offence the Court may apply State and Territory law relating to the trial and sentencing of young people. In practice, it is extremely rare for a juvenile to commit and be charged with a Federal offence.

157. In the Australian Capital Territory the Children's Services Act 1986 provides that children may be detained in a remand centre:

- because of their actual or apprehended violent behaviour;
- by reason of the seriousness of the offence;
- because of an escape or attempted escape by the child; or
- for other good cause.

158. In the Northern Territory the Juvenile Justice Act 1983 defines a juvenile as a person who has not attained 17 years of age. A juvenile cannot be placed in prison except by order of the court, and must be 15 years of age. Provision also exists in the Act to detain juveniles above the age of 15 years in adult prisons in certain circumstances. Juveniles who are 17 year old and over are treated as adults for sentencing purposes, and if deprived of their liberty, will be detained in adult prisons.

159. In New South Wales children over 10 years may be arrested for offences and refused bail under the Bail Act 1978. The Children (Detention Centres) Act 1987 provides for children who are refused bail to be detained in a children's detention centre. Under the Children (Criminal Proceedings) Act 1987, a child found guilty of a criminal offence may be committed to a detention centre for a maximum of two years. However, the Children's Court has a discretion to sentence a young person convicted of an indictable offence as an adult, under the Children (Criminal Proceedings) Act 1987.

160. In Queensland the Juvenile Justice Act 1992 defines a child as a person under 17 years. The Act provides for maximum periods of detention which apply specifically

to children. Children are not permitted to be sentenced to adult imprisonment. Current practice is that offenders of 17 years of age are not to be detained in adult centres unless there are exceptional circumstances. The Corrective Services Act 1988 requires that persons under 18 years of age are strictly segregated from older prisoners if they are held in correctional centres.

161. The Victorian Children and Young Persons Act 1989 defines a child as a person who is under the age of 17 years at the time an offence is alleged to have been committed. As a result, cases concerning offences committed by 17 year olds are not dealt with in the Children's Court. The Corrections Act 1986 does not place an age restriction on people who may be sentenced to imprisonment. Under the Victorian system, courts have the option of sentencing offenders aged 17 to 21 years to a custodial sentence in either the youth or adult correctional system, as well as non-custodial options. The Government provides courts with this dual-track sentencing option of either the adult or juvenile systems in recognition that an arbitrary cut-off point for the juvenile system, based entirely on age, is not always appropriate.

162. In South Australia persons under the age of 18 years are treated as children for the purposes of the criminal law. Young offenders can be sentenced to periods of detention for up to three years in a training centre (there is no minimum period). Other sentencing options include fines, community service, supervision orders and home detention.

163. Young offenders are dealt with as adults if:

- the offence is a homicide or attempted homicide or assault with intent to commit homicide;
- the offence is an indictable offence and the youth, after obtaining independent legal advice, asks to be dealt with as an adult; or
- the court or the Supreme Court determines on the application of the Director of Public Prosecutions or a police prosecutor, that the youth should be dealt with as an adult because of the gravity of the offence, or because the offence is part of a pattern of repeated offending.

164. A child dealt with as an adult in an adult court may be sentenced to imprisonment but must serve that sentence of imprisonment in a training centre until he or she turns 18.

165. In Tasmania a child can be imprisoned if the child is over 14 years of age for a particular group of offences, including murder and rape. The practice is to transfer such prisoners to a juvenile facility without exception, on the Minister's approval. A

child over the age of 16 can be imprisoned for serious offences. Again the practice is to transfer prisoners to a juvenile facility if this is considered appropriate.

166. In Western Australia under the Young Offenders Act 1994, a young person may be detained in a detention centre during the period for which he or she has been remanded by a court and for the period of the person's detention on committal for trial. If a young person reaches the age of 18 years while detained in a detention centre he or she may be transferred to an adult prison and will be treated as an adult prisoner on remand.

167. Two of the general principles of juvenile justice are relevant in respect of deprivation of liberty and imprisonment. Section 7 of the Young Offenders Act 1994 provides that detention of a young person should only be used as a last resort and then only for as short a time as possible. Detention is to be in a facility where the young person is not exposed to contact with any adult detained at the facility, although a young person of 16 or over may be held in a prison for adults but is not to share living quarters with an adult prisoner.

168. Further information appears under Part H (b) (ii), Special protection measures, Children in conflict with the law, Children deprived of their liberty, below.

(j) Consumption of alcohol

169. In all States and Territories a child under the age of 18 may not consume alcohol on licensed premises and in general cannot be on licensed premises unless under the supervision of a responsible adult. The sale of tobacco to a person under 18 years is also prohibited. In Queensland the Juvenile Smoking Suppression Act 1995 prohibits smoking by children under 16 years of age.

C. GENERAL PRINCIPLES

(a) Non-discrimination (Article 2)

Article 2

1. ***States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.***

2. ***States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.***

170. The Federal Government and all States and Territories have enacted anti-discrimination legislation. The prohibited grounds of discrimination and areas covered vary between jurisdictions. There is a range of exceptions in the legislation, and provision for special measures, that is, measures which are intended to promote the equality of groups.

171. Complaints are investigated and conciliated by the Federal, State or Territory bodies established to administer this legislation. In general, similar procedures are followed in all jurisdictions. If conciliation cannot be achieved, there is provision in most cases for the matter to be referred to a public hearing for determination. Appeal mechanisms are available from the decisions made at this stage of the process. In practice, a small proportion of complaints go to hearing or beyond. There is also provision for complaints of victimisation to be made, for example, where a complainant is victimised as a result of having made a complaint.

172. Children enjoy the same rights to make complaints of discrimination under Australian legislation as do adults. In practice, adults, such as parents or guardians, often make complaints on behalf of children. Although there has been no specific study into the extent to which children use discrimination legislation, a range of complaints of discrimination on the ground of disability in the areas of education and the provision of services have been made.

173. Children will be assisted in the exercise of their rights through the establishment of a Discrimination and Human Rights Law Centre proposed in the Access to Justice Statement released by the Attorney-General in May 1995. The Centre will service a wide range of clients across a variety of areas of discrimination and human rights law.

174. The following is a list of anti-discrimination legislation in force in Australia.

Federal:	Sex Discrimination Act 1984
	Racial Discrimination Act 1975
	Disability Discrimination Act 1992
	Human Rights and Equal Opportunity Commission Act 1986
Australian Capital Territory:	Discrimination Act 1991
New South Wales:	Anti-Discrimination Act 1977
Northern Territory:	Anti-Discrimination Act 1992
Queensland:	Anti-Discrimination Act 1991
South Australia:	Equal Opportunity Act 1984
Tasmania:	Sex Discrimination Act 1995
Victoria:	Equal Opportunity Act 1995
Western Australia:	Equal Opportunity Act 1984

175. Further related information appears in Part H(d), Special protection measures, Children belonging to a minority or an indigenous group, below.

Federal matters

176. The Sex Discrimination Act 1984 prohibits discrimination on the grounds of sex, marital status and pregnancy. Dismissal from employment on the ground of family responsibilities is also covered. The Act also makes sexual harassment unlawful in various areas of public life. The Racial Discrimination Act 1975 prohibits discrimination on the grounds of race, colour, descent and national or ethnic origin. The Disability Discrimination Act 1992 prohibits discrimination on the ground of disability. Disability is broadly defined to include, among other things, the loss,

partial loss or impairment of physical or mental functions and the presence in the body of organisms causing or capable of causing disease or illness. Under the Human Rights and Equal Opportunity Commission Act 1986 and Regulations, complaints of discrimination in employment may be made on a wide range of grounds which include age, medical record, criminal record, impairment, sexuality and trade union activity. This Act also enables the Commission to investigate and conciliate breaches of human rights (by Federal Government agencies) recognised in various international instruments including the UN Convention on the Rights of the Child and the International Covenant on Civil and Political Rights.

177. Functions concerning Australia's responsibilities under the International Labour Organisation Discrimination (Employment and Occupation) Convention 1958 (ILO 111) are conferred on the Human Rights and Equal Opportunity Commission by the Human Rights and Equal Opportunity Act 1986. In 1989, the Federal Government passed regulations which gave domestic effect to ILO 111 by specifying age as one of the grounds of discrimination within the Human Rights and Equal Opportunity Commission's functions relating to equal opportunity and treatment in employment and occupation under the Convention. The functions of the Commission include the investigation of complaints of discrimination on the ground of age in employment and occupation in the Federal, State or private sectors.

178. However, the Human Rights and Equal Opportunity Commission Act 1986 does not make it unlawful to discriminate on the ground of age and many complaints are not able to be conciliated, especially where the employer is bound to apply legislation which contains discriminatory provisions.

179. The Federal Government has established an Age Discrimination Task Force to consider age discrimination. The Taskforce is considering a possible strategic framework and legislative and non-legislative options, in particular in relation to discrimination on the ground of age which has adverse consequences for individuals. The Taskforce will also assist in the organisation of a forum later in 1995 to review the legal needs of older people and to discuss appropriate action to meet those needs.

State and Territory matters

Australian Capital Territory

180. The Australian Capital Territory Discrimination Act 1991 makes discrimination unlawful on the grounds of sex, sexuality, race, transsexuality, marital status, parental status, pregnancy, race, religious or political conviction, physical or mental disability, membership or non-membership of an employee or employer association, occupation

or age in areas such as employment, education, accommodation and the provision of goods, services and facilities. Sexual harassment and racial vilification are also covered.

New South Wales

181. In New South Wales the Anti-Discrimination Act 1977 prohibits discrimination on the grounds of race, sex (including pregnancy), marital status, disability, homosexuality, age and by compulsory retirement. The Act also prohibits racial vilification, homosexual vilification and HIV/AIDS vilification. The New South Wales Equal Opportunity Tribunal has established the right (which has been confirmed on appeal) of children as infants in law to have complaints of discrimination heard by the Tribunal, provided a person of full legal capacity bears the responsibility for their costs.

Northern Territory

182. In the Northern Territory the Anti-Discrimination Act 1992 prohibits discrimination on the grounds of race, sex, sexuality, age, marital status, pregnancy, parenthood, breastfeeding, impairment (which covers physical, psychological, physiological and intellectual impairment), trade union or employer association activities, religious belief or activity, political opinion, affiliation or activity, irrelevant medical record, irrelevant criminal record, or association with a person who has, or is believed to have, an attribute referred to above. The legislation exempts discrimination where reasonably necessary to protect public health, in relation to some sporting activities or in order to promote equality of opportunity for disadvantaged persons.

183. The Northern Territory Anti-Discrimination Act 1992 further provides that 'a person may require, in terms of providing goods, services and facilities to a child, that the child is accompanied by an adult if there is a reasonable risk that the child could cause a danger to himself or herself, or others, if not accompanied by an adult'.

184. Sexual harassment as well as harassment on the basis of any of the above attributes are also covered.

185. The Status of Children Act 1978 provides that 'the relationship between every person and his mother or father shall be determined irrespective of whether the father or mother are or have been married to each other and all other relationships shall be determined accordingly'. Thus, the status of ex-nuptial children in the Northern Territory is the same as that of children born within marriage. The Act however

imposes some limitations in relation to claims under an instrument for property by an ex-nuptial child.

Queensland

186. The Anti-Discrimination Act 1991 prohibits discrimination on the grounds of sex, marital status, pregnancy, parental status, race, impairment, religion, political belief or activity, lawful sexual activity or trade union activity, in the areas of work, education, the provision of goods and services, superannuation, insurance, disposition of land, accommodation, club membership and affairs, administration of State laws and programs and local government. The Act makes it unlawful to discriminate against a woman in the provision of goods and services on the ground that she is breastfeeding.

187. In addition, the Act prohibits discrimination on the basis of age. An exemption is made for youth-work wages to permit a person to remunerate a worker who is under 21 years of age according to the worker's age. Age-based benefits are preserved so that a person may supply benefits and concessions on the basis of age. For example, a bus operator may give travel concession to people under the age of 12 or over the age of 70. Finally, the legislation provides that as a term of supplying goods and services to a minor, a person may require that the minor be accompanied by an adult if there would be a reasonable risk that the minor would cause a disruption or endanger himself or herself or others if not accompanied by an adult. As well, a person may discriminate against another person because the other person is subject to a legal incapacity if the incapacity is relevant to the transaction in which the person is involved. For example, it is not unlawful for a person to refuse to enter into a contract with a minor.

South Australia

188. The Equal Opportunity Act 1984 came into effect on 1 March 1986. The Act prohibits discrimination on the ground of race, sex, sexuality (which includes homosexuality, bisexuality and transsexuality), marital status, pregnancy, age or impairment in the areas of employment, associations, qualifying bodies, educational authorities, land, accommodation and the provision of goods and services. A recent amendment to the Act deems it unlawful discrimination on the ground of race if an authority or body fails to take reasonable steps to inform itself sufficiently on the adequacy or appropriateness of qualifications. Discrimination on the ground of impairment under the Equal Opportunity Act 1984 has been interpreted very broadly

administratively so as to allow all HIV positive persons to have access to the complaints mechanism.

189. The Equal Opportunity Act 1984 contains a range of exemptions, examples of which are as follows:

- charitable institutions conferring benefits wholly on one race, persons of a particular sexuality, marital status, age or age group, persons with impairment or pregnant women;
- a scheme for the benefit of persons of a particular race, marital status, age group or persons with an impairment;
- discrimination on the ground of pregnancy, impairment or age in employment where the person would not be able to perform adequately without endangering him or herself;
- discrimination on the ground of pregnancy, impairment or age in employment where the person is unable to respond adequately to situations of emergency reasonably anticipated in connection with his or her employment;
- discrimination on the ground of pregnancy where it arises out of the dismissal for a pregnant woman from employment and where there is no other work that the employer could reasonably offer her;
- discrimination on the ground of age where an act is done in compliance with an award or agreement made or approved under the Industrial Conciliation and Arbitration Act 1904; and
- discrimination by an association on the ground of age where the association has, on a genuine and reasonable basis, established different classes of membership for persons of different age groups.

190. The Family Relationships Act 1975 provides that, for the purpose of State law, a person and his or her birth father or mother are parent and child, and the other relationships of consanguinity or affinity shall be traced accordingly.

Tasmania

191. The Sex Discrimination Act 1994 proscribes discrimination on the grounds of gender, marital status, pregnancy, parental status or family responsibilities. Sexual harassment is also prohibited, as well as the publication or display of any matter which promotes, expresses or depicts prohibited conduct or discrimination. The State Government advises that child welfare, education and health policies are non-discriminatory.

Victoria

192. The Equal Opportunity Act 1995 prohibits discrimination based on the attributes of age, impairment, industrial activity, lawful sexual activity, marital status, physical

features, political belief or activity, pregnancy, race, religious belief or activity, sex, status as a parent or carer and personal association.

193. Within the framework of the Equal Opportunity Act 1995, the Ethnic Affairs Commission Act 1982 and the Government's Social Justice Strategy, all relevant policy and program areas are committed to non-discrimination against children from ethnic, religious and linguistic groups, and to special measures for such groups.

194. The Youth Affairs Act 1986 provides for the promotion of the recognition and development of the social rights of young people, and the promotion of equal opportunity and affirmative action in Government policies and programs concerning young people.

195. The Residential Tenancies Act 1980 protects the rights of tenants, many of whom are young people, and aims to prevent discrimination against a person with children wishing to rent a property under a tenancy agreement.

196. The Intellectually Disabled Persons' Services Act 1986 promotes access of children to mainstream services and the prevention of discrimination against children with disabilities. The principle of non-discrimination is also recognised in the Health Services Act 1988. One of the objectives of that Act is to ensure that an adequate range of health services is available to all persons resident in Victoria, irrespective of where they live or their social or economic status.

197. Both State and Federal Government guidelines for child care service subsidy require that services do not adopt discriminatory practices in relation to admission to the service.

Western Australia

198. The Equal Opportunity Act 1984 makes it unlawful to discriminate on the grounds of sex, marital status, pregnancy, race, age, family responsibilities, political and religious conviction or impairment in certain areas of public life, that is employment, education, provision of accommodation, goods, services and facilities, access to places and vehicles. Sexual and racial harassment are also unlawful under the Act.

Equality of Status

199. All States and Territories, except for Western Australia, have equality of status legislation, the purpose of which is to give both children of a marriage and ex-nuptial

children equal status under State and Territory legislation. The relevant legislation is as follows:

Australian Capital Territory:	Birth (Equality of Status) Act 1988
New South Wales:	Children (Equality of Status) Act 1976
Northern Territory:	Status of Children Act 1978
Queensland:	Status of Children Act 1978
South Australia:	Family Relationships Act 1975
Tasmania:	Status of Children Act 1974
Victoria:	Status of Children Act 1978

(b) Best interests of the child (Article 3)

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

200. The best interests of the child is the key principle in most legislation concerning children in Federal, State and Territory jurisdictions.

201. In the decision handed down by the High Court of Australia on 7 April 1995 in Minister for Immigration and Ethnic Affairs v Ah Hin Teoh (1995) 69 ALJR 423 the High Court reaffirmed the well established principle that treaties to which Australia is a party do not form part of Australian law unless their provisions have been incorporated into our municipal law by statute. However, the High Court also held that the joining of a treaty by Australia gave rise to a legitimate expectation that if a decision maker proposed to make a decision which was not in conformity with the treaty, the decision maker must give notice and provide an adequate opportunity of presenting a case against taking such a course. The existence of the legitimate expectation gave rise to a right to procedural fairness and not a legitimate expectation that the delegate would act in a particular way. Further, the High Court held that the acts of the Executive Government giving rise to the legitimate expectation were subject to any statutory or executive indications to the contrary.

202. The case concerned a decision by the Department of Immigration and Ethnic Affairs to deport a man who was the father/stepfather of children who were Australian citizens. The question arose as to whether there was a 'legitimate expectation' that the 'best interests' of the children, as stated in Article 3 of the Convention on the Rights of the Child, would be a primary consideration in the making of this decision.

203. In a joint statement issued on 10 May 1995 by the Minister for Foreign Affairs Senator Gareth Evans and the Attorney-General Michael Lavarch, the Government stated that entering into an international treaty does not raise a legitimate expectation that government decision-makers will act in accordance with the treaty prior to its enactment into domestic Australian law, and that any expectation that may arise does not provide a ground for review of a decision. This applies for existing treaties and for future treaties to which Australia may become a party. This statement covered decisions by State and Territory Governments as well as the Federal Government.

204. The Ministers expressed concern that 'because of the wide range and large number of decisions potentially affected by the decision, a great deal of uncertainty has been introduced into government activity'. The areas of decision making cover a diverse range of situations where there are many legitimate differences of approach and possibilities for delay.

205. It was announced therefore that legislation would be introduced into the Federal Parliament to clarify the situation.

206. The foreshadowed legislation, the Administrative Decisions (Effect of International Instruments) Bill 1995, passed through the House of Representatives on 21 September 1995. The Explanatory Memorandum states that:

> The purpose of the Bill is to eliminate any expectation which might exist that administrative decisions, whether at the Commonwealth, State or Territory level, will be made in conformity with provisions of ratified but unimplemented treaties, or, that if a decision is to be made contrary to such provisions, an opportunity will be given for the affected person to make submissions on the issue.

207. On 5 July 1995 the Attorney-General announced a review to ensure Australia's treaty commitments are adequately recognised in Federal administrative decision making. The review will be carried out by the Attorney-General's Department in consultation with the Human Rights and Equal Opportunity Commission and other government departments to identify key areas of Federal administrative decision making where Australia's obligations under international agreements may be relevant.

The aim of the review is to ensure that full and proper consideration is given to those obligations in the decision making process.

Federal matters

The Family Law Act 1975

208. The Family Law Act 1975 provides that in making orders, the Family Court must regard the welfare of the child as the paramount consideration. Under the Family Law Reform Act 1995, it is the best interests of the child which are to be the paramount consideration. This is consistent with the terminology used in the Convention on the Rights of the Child. The 1995 Act provides a list of factors that the court must consider in determining the child's best interests. These include:

- any wishes expressed by the child;
- the nature of the child's relationship with both parents;
- the likely effect of any change in the child's circumstances;
- the child's physical, emotional and educational needs;
- the maturity, sex, background and other relevant characteristics of the child including the need to maintain a connection with Aboriginal or Torres Strait Islander culture;
- any harm the child has suffered or is likely to suffer;
- the attitude and responsibilities of parenthood displayed by the parents;
- any family violence or family violence order;
- whether it would be preferable to make an order that would be least likely to lead to further proceedings; and
- any other fact or circumstance the court considers relevant.

209. Further issues relating to family law and the interests of children are discussed under Part E (c), Family environment and alternative care, Separation from parents.

State and Territory matters

Australian Capital Territory

210. The Children's Services Act 1986 provides that in any proceedings which concern or affect a child, the court must exercise its jurisdiction to ensure that the child will have the care, protection, control or guidance which will best lead to the proper development of his or her personality and to the child's becoming a responsible and useful member of the community.

211. The policy of the Family Services Branch (part of the Housing and Family Services Bureau), which administers the Children's Services Act 1986, is focussed on the welfare and interests of children. A central role of Family Services is to deliver services that protect children from all forms of abuse, neglect and exploitation. Family Services is committed to contributing to the environment in which children are raised, trying to ensure this environment meets their physical, mental, moral and social needs and is one in which the rights of children are respected and upheld.

New South Wales

212. The Children (Care and Protection) Act 1987, administered by the Department of Community Services, provides a legislative framework for action and service provisions in the field of child protection and alternate care. The object of the Act is to ensure that children in need of care are provided with assistance and support services based on the premise that the welfare and interests of children are to be given paramount consideration. The Act also provides that the welfare and interests of wards and protected persons shall be given paramount consideration and that regard shall be had to a child's wishes in any decision about the child. The Adoption of Children Act 1965 provides that in making orders relating to a child the court should regard the child's welfare as the paramount consideration.

Northern Territory

213. The Community Welfare Act 1983 provides that in the exercise of his or her power the Minister must at all times have as his or her main consideration the welfare of the child in relation to whom those powers are exercised, particularly for:

- securing for the child such care and guidance as will promote that welfare; and
- the maintenance and development of those family relationships that are in the best interests of the child.

214. The policy of the Family, Youth and Children's Services Division of the Department of Health and Community Services, which administers the Community Welfare Act 1983, stresses that any intervention is to be child focussed with the needs of the child being of paramount consideration.

Queensland

215. Under the Children's Services Act 1965, the Director-General of the Department of Family Services and Aboriginal and Islander Affairs has the duty in respect of any child admitted to care under a care and protection order to further the best interests of the child. Currently, Queensland has specific policy guidelines which state explicitly

that all decisions concerning children in care shall be made according to the child's best interests.

216. There are currently case management standards being developed which identify the necessity for a child's involvement in decision making prior to any decision being made about the child. The extent of the child's participation will be determined by the child's age and developmental level.

South Australia

217. The Children's Protection Act 1993 requires that in the exercise of the powers under the Act the safety of the child is the paramount consideration and the powers must always be exercised in the best interests of the child. The best interests principle is also embodied in the Community Welfare Act 1973, the Adoption Act 1988 and the Reproductive Technology Act 1988.

218. The objects and statutory policies of the Young Offenders Act 1993 are as follows:

- The object of this Act is to secure for youths who offend against the criminal law the care, correction and guidance necessary for their development into responsible and useful members of the community and the proper realisation of their potential;
- The powers conferred by this Act are to be directed towards that object with proper regard to the following statutory policies:
    - a youth should be made aware of his or her obligations under the law and of the consequences of breach of the law;
    - the sanctions imposed against illegal conduct must be sufficiently severe to provide an appropriate level of deterrence; and
    - the community, and individual members of it, must be adequately protected against violent or wrongful acts.
- Effect is to be given to the following statutory policies so far as the circumstances of the individual case allow:
    - compensation and restitution should be provided, where appropriate, for victims of offences committed by youths;
    - family relationships between a youth, the youth's parents and other members of the youth's family should be preserved and strengthened;
    - a youth should not be withdrawn unnecessarily from the youth's family environment;
    - there should be no unnecessary interruption of a youth's education or employment; and
    - a youth's sense of racial, ethnic or cultural identity should not be impaired.

Tasmania

219. The child's best interests are provided for in the Adoption of Children Act 1988 and in legislation relating to care and protection of children.

Victoria

220. Victorian Government policies and programs which affect children are based on the principle that actions and decisions will be taken with due consideration of the paramountcy of the interests of the child. The Adoption Act 1984 establishes the best interests of the child to be the paramount consideration in adoption. The paramountcy of the interests of the child is expressly recognised in the Children and Young Persons Act 1989 which lists the matters to which the Children's Court must have regard when exercising its jurisdiction.

221. The best interests of the child are a major consideration in reaching a decision on an application for a child to reside with a parent in prison. The case of each child living in prison is reviewed every three months to monitor progress and ensure that the best interests of the child continue to be met by residing in prison.

222. The Adoption Act 1984 establishes that the best interests of the child will be a paramount consideration in adoption.

Western Australia

223. Under the Western Australian Family Court Act 1975 the paramount consideration is the welfare of the child in determining issues of custody, guardianship and access. In criminal cases there is no specific legislation which says that the best interests of the child have to be considered in determining a sentence for a child who has committed an offence but the welfare of the child is invariably considered when deciding the sentence.

224. Section 46 of the Young Offenders Act 1994 provides that when dealing with a young person who has been found guilty of an offence the court is to apply the general principles of juvenile justice. The general principles of juvenile justice contained in section 7 of the Act imply that the best interests of the child are paramount.

225. The Child Welfare (Detention Centres) Regulations also make reference to the best interests of the detainee in respect of the refusal of the detainee to see a visitor and the management of misbehaviour.

226. Further information on juvenile justice appears under Part H(b), Children in conflict with the law.

(c) The right to life, survival and development (Article 6)

Article 6

1. ***States Parties recognise that every child has the inherent right to life.***

2. ***States Parties shall ensure to the maximum extent possible the survival and development of the child.***

227. The following material addresses Article 6 (1). Material on Article 6 (2) - the right to survival and development - appears in Part F, Basic health and welfare.

Criminal and civil law

228. The Criminal Codes of Queensland, Western Australia, Tasmania and the Northern Territory embody the major aspects of the criminal law in those jurisdictions. In the other jurisdictions the criminal law is found in the common law and various legislation. Provisions of the criminal law which cover murder and manslaughter and provisions of the civil (non-criminal) law which cover wrongful act or omission causing death apply equally to adults and to children as victims of such acts. However, there exist provisions in criminal legislation which refer specifically to children.

229. In the Australian Capital Territory relevant provisions are found in the Crimes Act 1900. It is an offence to expose or abandon a child under two years of age and thereby endanger the life or health of the child. It is an offence, in relation to a childbirth and before the child is born alive, to:

- prevent the child being born alive;
- contribute to the child's death; or
- inflict grievous bodily harm on the child.

230. Also, under section 139 of the Children's Services Act 1986, it is an offence punishable by fines, imprisonment or both, to ill-treat a child, fail to provide adequate and proper lodging, food or clothing, nursing, medical or dental care and attention or to leave a child unattended when the child could suffer injury or sickness or otherwise be in danger.

231. In New South Wales, in addition to the provisions of the general criminal law, a number of sections of the Crimes Act 1902 protect children, including:

sections 20-22A:	child murder and infanticide
section 42:	injuries to a child at time of birth
section 43:	exposing or abandoning a child under two
section 44:	not providing a child with food etc
sections 82-84:	unlawful abortion
section 85:	concealment of birth after 28th week of pregnancy

232. In addition to the above, the New South Wales Children (Care and Protection) Act 1987 also creates offences which protect children. They are:

section 25:	abuse of children
section 26:	neglect of children

233. The South Australian Criminal Law Consolidation Act 1935, contains additional provisions protecting children, similar to the New South Wales Crimes Act 1902 provisions.

234. In Western Australia the Criminal Code provides that it is the duty of every person who, as head of a family, has the charge of a child under the age of 16 years, being a member of his or her household, to provide the necessaries of life for the child, and he or she is held to have caused any consequences which result to the life or health of the child by reason of any omission to perform that duty whether the child is helpless or not.

235. The Criminal Code also protects children by criminalising conduct which might restrict the right of a child to life, survival and development. The Code creates the following offences:

- attempts to procure abortion;
- death by acts done at childbirth;
- killing an unborn child;
- concealing the birth of children;
- infanticide;

- endangering the life of children by abandonment or exposure; and
- desertion of children.

236. Section 130 of the Child Welfare Act 1947 also makes it an offence for a parent to desert a child or to wilfully leave the child without, or wilfully neglect to provide the child with, adequate means of support.

237. In the Northern Territory a child's inherent right to life is protected by a number of provisions in the Criminal Code. For example, it is an offence to endanger the life of a child under two by exposure. Any person who unlawfully fails in his or her duty to provide the necessaries of life to a child is also guilty of a crime. The Code provides limited circumstances in which a medical practitioner may procure the miscarriage of a woman. The Criminal Code also states that a person who does an act or omits to do an act before or during the birth of a child that causes the death of the child is deemed to have killed that child and the relevant murder or manslaughter charges apply.

238. The Crimes Act creates an offence of infanticide, which carries a punishment equivalent to manslaughter, where a woman wilfully causes the death of her child under the age of 12 months while suffering from post-natal depression. This provision, while recognising the seriousness of the crime of infanticide, provides compassionate consideration of the mother's circumstances and is not regarded as being inconsistent with Article 6.

239. Under the Act, there is also a separate offence of concealing the birth of a child which carries a penalty of not more than two years imprisonment.

240. Both the Intellectually Disabled Persons' Services Act 1986 and the Children and Young Persons Act 1989 seek to protect children's right to life, survival and development. Many key health policies and programs have similar goals. These are discussed under Part F (c), Basic health and welfare, Health and health services.

241. In Tasmania a number of sections of the Criminal Code 1934 protect children in addition to the provisions of the general criminal law. Section 144 imposes a duty on every person who has the charge of another person, who is by reason of age unable to provide for himself or herself, to provide that person with necessaries. In addition, section 145 of the Code imposes a duty on the head of a family who has the charge of a child under the age of 16 years, to provide that child with the necessaries of life. A breach of these duties is a crime under the Code. Section 165 creates the crime of

causing the death of a child before birth and section 165A provides for a charge of infanticide. In addition section 166 creates a crime of concealment of birth.

242. The criminal law in all Australian jurisdictions also covers abortion. The legislation has been interpreted in two major decisions. In R v Davidson [1969] VLR 667, the Supreme Court of Victoria held that the use of an instrument with intent to procure a miscarriage is unlawful on therapeutic grounds unless the accused honestly believes, on reasonable grounds, that the act was:

- necessary to preserve the woman from serious danger to her life, or to preserve her physical or mental health (not merely being the normal dangers of pregnancy and childbirth which the continuance of the pregnancy would entail); and
- in the circumstances, not out of proportion to the danger to be averted.

243. Similar reasoning was followed in the judgment of the New South Wales District Court in R v Wald (1971) 3 NSW DCR 25. These Victorian and New South Wales cases were subsequently followed in a Queensland case.

(d) Respect for the views of the child (Article 12)

Article 12

1. ***States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.***

2. ***For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.***

Federal matters

Family Court

244. It is a general principle of common law that every person who is affected by an administrative or judicial decision has a right to procedural fairness. A juvenile therefore has the right, at common law, to be heard at any proceedings which affect his or her rights and may have the right to have his or her submissions made by legal representation. Procedural fairness applies in all cases except where it is limited or abolished by contrary statutory provisions.

245. The Family Law Act 1975 requires the Family Court to consider any wishes expressed by a child in relation to custody, guardianship or access of the child and to give those wishes such weight as the Court considers appropriate in the circumstances of the case. A child's wishes are not final but the older the child the more persuasive his or her wishes will be. The Family Law Act 1975 provides that, for the purpose of complying with these requirements, the court may have regard to a counselling report and inform itself of the wishes of a child by such other means as it considers appropriate. However, in order to protect a child from undue pressure, neither the court nor any person can require the child to express his or her wishes in relation to custody, guardianship or access or in relation to any other matters relevant to the proceedings.

246. Means by which the court may ascertain the wishes of a child include:

- permitting a child to give formal evidence, either orally as a witness or by affidavit;
- private interview by the judge in chambers;
- interview by the judge in the courtroom in the presence of the parties and their lawyers;
- hearsay evidence presented by a party or a witness (pursuant to the exception to the rule against hearsay in the Family Law Act 1975); and
- through the child's separate legal representative.

247. Ascertaining a child's wishes by oral evidence, by affidavit or by judicial interview is not encouraged by the court. The preferred approach is through the child's separate representative or by a report from a counselling or welfare officer in order to ensure that evidence is established in the most sympathetic and non-threatening environment possible.

248. The court may appoint a separate representative for a child in family law proceedings on application by the child, another person or on its own motion, where it considers the child ought to be separately represented. In 1994 the Family Court of Australia laid down guidelines for the appointment of separative representatives for children. Subject to the general rule that a separate representative should be appointed when the court considers that a child's best interests require independent representation, the court has set out circumstances where appointments should normally be made. These include where there are allegations of child abuse, there is an apparently intractable conflict between the parents, the child is apparently alienated from one or both parents, a child of mature years is expressing strong views which would, if given effect, result in a change of a long-standing custodial arrangement or a

complete denial of access to one parent, and custody cases where none of the parties are legally represented.

Legal aid

249. Legal Aid and Family Services administers the Federal Community Legal Centre Program which provides funds to generalist community legal centres and specialist women's legal services and youth legal services. Community legal centres provide access to legal services for disadvantaged persons who currently are unable to access services.

250. The protection of a child's rights is seen as more important by legal aid commissions than most other applications for assistance. This is reflected in their determination of priorities for the types of matters in which they will provide assistance. Matters which are given the highest priority are cases where an individual's liberty is at risk, and cases where the welfare of a child, or a child's rights need to be protected.

251. In addition, Legal Aid Commissions are being increasingly asked to provide representation for children in family court matters, where it is considered that the interests of a child are not necessarily the same as the parents' interests. This has resulted in a significant increase in demand for legal aid services for the separate representation of children in family law matters. In May 1995 the Federal Government announced in the Justice Statement that it will establish the Australian Legal Assistance Board to actively pursue a national approach to the delivery of legal aid to increase access, equity and efficiency.

252. The Aboriginal and Torres Strait Islander Commission provides financial assistance to community-based Aboriginal and Torres Strait Islander organisations to provide legal advice, legal representation and other related services to Indigenous people including children. Aboriginal and Torres Strait Islander Legal Services received over $30 million in grant funding during 1993-94. These services exist in all States and the Northern Territory and take a range of forms including the Aboriginal Legal Service Ltd Sydney, the Victorian Aboriginal Legal Service, the South East Queensland Aboriginal Corporation for Legal Service, the Bidjara Aboriginal Corporation, Gurindal Cell Visitors, the Aboriginal Legal Rights Movement Inc, Aboriginal Child Care Agency of WA, the Tasmanian Aboriginal Centre Inc and the Northern Australia Aboriginal Legal Aid Service Inc.

State and Territory matters

Australian Capital Territory

253. The Principles of Service in Family Services state that service delivery must be responsive to individual needs, non-judgmental and culturally sensitive. Further, people affected by decisions, particularly children, have a right to participate in decisions that affect them. This principle is reiterated in other policies, such as those concerning substitute care. In court proceedings a child may make representations in person to the court without legal representation and the court shall have regard to those representations. The Children's Services Act 1986 also provides that the courts shall have regard to the wishes of a child, if the child is capable of expressing them, before making an order. The Children's Court may also appoint a 'next friend' to represent and advocate for a child in court, if it thinks it is in the interests of the child to do so. The Community Advocate Act 1991 also ensures that the wishes and interests of a child are given due regard by the courts and tribunals.

254. The principle of 'respect for the views of the child' is also established within the Adoption Act 1993. The views of children must be taken into account according to their age and level of understanding in any adoption proceedings.

255. The Evidence (Closed Circuit Television) Act 1991 regulates the taking of evidence from child witnesses. Video equipment is used in the Magistrates' Court to take evidence from child witnesses, thus alleviating to some extent the trauma associated with giving evidence in court. The program is used with all young people required to give evidence in cases of child sexual abuse.

New South Wales

Care and protection matters

256. The Children (Care and Protection) Act 1987 makes provision for the views of children to be considered in care and protection matters. As far as possible these principles are carried out in practice. In a minority of cases it is necessary to initiate legal proceedings to protect children from their parents. In these cases the Act requires that the court must be satisfied that any order made in respect of a child will result in a significant improvement of the standard of care being given to the child and, further, the court must consider, among other things, the views of the child. The Children (Criminal Proceedings) Act 1987 requires a court to ensure that a child has the opportunity to be heard and to participate when she or he is the subject of criminal proceedings.

257. Two other Acts make specific provision for the views of children to be taken into account. First, in proceedings under the Adoption of Children Act 1965, the views of children are always taken into account according to their age and level of understanding. While the Act provides for children of or above the age of 12 to give consent to their own adoption, specific policies of the Department which have been endorsed by the Court ensure that all children of or above the age of five are made aware of their proposed adoption and have the opportunity to express their views, at least through an independent social worker, about the proposal.

258. Secondly, under the Community Services (Complaints, Appeals and Monitoring) Act 1993, children in alternate care are able to have their views made known about decisions affecting them. They have a voice generally through the Official Visitors, who have a right to visit them after they have been in alternate care for in excess of three months; they also can be a party to administrative appeals on a range of matters to the Community Services Appeals Tribunal.

Young witnesses

259. Recent legislative initiatives have been specifically aimed at assisting young witnesses. For example, the Crimes (Child Victim Evidence) Amendment Act 1990 has been introduced to enable young people to give evidence by closed circuit television in certain criminal proceedings.

Consultation with young people

260. The New South Wales Office of Youth Affairs has engaged in a series of consultations with young people and is committed to the principle of ensuring that young people are encouraged to participate in making decisions which affect their lives. This is reflected in the New South Wales Government Youth Affairs Policy Statement and the preparation of the Youth Affairs Strategic Plan.

Student representative councils

261. Many schools in New South Wales have Student Representative Councils (SRCs). SRCs promote interpersonal skills, individual development and student participation in school decision making processes. The annual SRC conference provides an opportunity for student leaders from across the State to meet and contribute to the decision making processes of the Department of School Education. The State Council of SRCs includes a representative of each region. This group meets annually with the Minister for Education to raise issues of concern to young people.

262. School Councils are now able to include student representation in their membership. This means that students, through their representatives, can participate in decisions about overall budget priorities, aims of the school and broad educational goals.

Northern Territory

263. The Principles of Substitute Care implemented by the Family, Youth and Children's Services Branch of the Department of Health and Community Services provide that a child's opinion will be given some weight in determinations affecting the child. The Community Welfare Act 1983 stipulates that the Family Matters Court should consider, having regard to the age and level of comprehension of a child, the reactions of the child to the proceedings and the child's wishes in relation to the outcome of the proceedings.

Queensland

264. The Department of Family Services and Aboriginal and Islander Affairs encourages children's opinions to be taken into account during any planning process which involves them. Children who are considered able to contribute are invited to attend planning meetings. Departmental policy advises flexibility according to a child's age and level of understanding as to his or her actual presence in case planning and other meetings affecting them. Case management standards are being developed which identify the necessity for a child's involvement in decision making prior to any decision being made about him or her. The extent of a child's participation is determined by his or her chronological age and developmental level.

265. In relation to judicial proceedings in complex (often contested) cases, the magistrate of the Children's Court uses discretionary powers under the Children's Services Act 1965 to seek separate representation for a child. This means applying to Legal Aid for a solicitor to represent the child. The Education Department recognises the contribution which children can make to the evolution of their own curriculum and is involving children in the development of curriculum in the upper primary and secondary levels.

South Australia

266. The Children's Protection Act 1993 provides that if a child is able to form and express his or her own views as to his or her ongoing care and protection, these views must be sought and given serious consideration, taking into account the child's age

and maturity. The Community Welfare Act 1973 and the Adoption of Children Act 1988 similarly provide for the child's views to be taken into account.

Tasmania

267. It is child welfare policy to take a child's views into account when making a decision about his or her care and placement and this is incorporated in case management standards. A Steering Committee has been established to oversee the drafting of new separate legislation for child welfare and juvenile justice which will contain provisions relating to respect for the views of the child.

Victoria

268. The Youth Affairs Act 1986 aims to encourage and facilitate the effective involvement of young people in decision making in relation to the social, economic, cultural and political life of the community, and the participation of young people in the attainment of the objects of the Act.

269. The Office of Youth Affairs funds youth groups and agencies and initiates consultations with young people on issues which affect them. These include issues of access and availability of youth services and programs in growth corridors. In 1991 the Minister responsible for Youth Affairs reformed the Youth Policy Development Council (YPDC), which is established under the Youth Affairs Act, to include a majority membership of young people. Seventy-five per cent of members are now under 25 years of age and the youngest member is 15. The YPDC will continue to conduct consultations with young people across Victoria. All findings and comments received by the YPDC and the OYA form the basis of recommendations for action to the Victorian Government. In this way young people are being encouraged to have a say in decisions which affect their lives.

270. It is considered that appropriate weight is given to the views of the child in respect of services provided by the Health Department. The Intellectually Disabled Persons' Services Act 1986, the Adoption Act 1984 and the Children and Young Persons Act 1989 promote the participation of children in decisions which affect them and provide appeal rights if their views are not respected.

271. All school councils have the discretion to co-opt students as members of the school council. There is an expectation that secondary colleges will recognise the important perspectives that students bring to a school council and will carefully consider their representation through co-option. Many schools also establish student representative councils to enable children to express their views on matters that affect

their schooling. Australian teachers are generally trained to encourage children to give their own views in classroom discussions and to respect those views.

Western Australia

272. In both Family Court proceedings and proceedings in the Children's Court to have a child declared in need of care and protection, the child may be separately represented and provide his or her views to the Court. In criminal proceedings against a child, the child has the right to be heard in the same way as an adult and in civil proceedings the child may be separately represented by a guardian ad litem. Although parents have formal control over their children's affairs until the children are 18, in practice the views of teenage children are always taken into consideration in determining the issues.

273. The Health Department has a strong commitment to ensuring that all its health service outlets provide for children to express their views according to their age and maturity. It released its Policy on Informed Consent in 1991. This policy applies to all Departmental and Board hospitals with the exceptions of teaching hospitals and hospitals established under the Mental Health Act. Under this policy a mature minor may consent to treatment and may expect that his or her privacy will be respected. The judgment of maturity is to be based on the capacity of the individual, not upon his or her age. The nature and complexity of the treatment will affect the ability of the minor to understand the implications and therefore will affect the assessment of maturity. If a minor is considered to be a mature minor then there is no legal requirement to inform or to take into account the wishes of the parent or any other person. If it is decided that the minor is mature, then it must also be accepted that the minor can determine his or her own best interest, and confidentiality must be respected. This reflects the current law in Western Australia.

274. The Mental Health Act 1962 provides that a person under the age of 18 years who in the opinion of a psychiatrist is, or appears to be, suffering from a mental illness may be received into an approved hospital at the request of one of his or her parents or guardians. There is no provision under the Act for the child's views to be taken into account in such a matter. Under the proposed new Mental Health Act, there is no specific reference made to minors and common law will prevail in such instances. The Policy on Informed Consent will apply as described for other health services.

D. CIVIL RIGHTS AND FREEDOMS

(a) Name and nationality (Article 7)

Article 7

1. ***The child shall be registered immediately after the birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.***

2. ***States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.***

275. In Australia, citizenship is a Federal Government responsibility whereas registration of births is governed by State and Territory legislation.

Citizenship

276. Children born in Australia before 20 August 1986 generally acquired Australian citizenship by virtue of birth in Australia. Children born in Australia on or after 20 August 1986 acquire Australian citizenship by virtue of birth in Australia:

- if at least one parent of the child was either an Australian citizen or a permanent resident at the time of the child's birth; or
- the child has been ordinarily resident in Australia throughout the period of 10 years commencing on the day on which the child was born.

277. The Australian Citizenship Act 1948 was recently amended to allow for the acquisition of Australian citizenship by children born in Australia who do not acquire any citizenship by birth and who would otherwise be stateless. A person acquires citizenship if the Minister for Immigration and Ethnic Affairs is satisfied that the person was born in Australia; is not, and has never been, a citizen of any country; and is not, and has never been, entitled to acquire the citizenship of a foreign country.

278. Children born overseas of an Australian citizen parent can acquire Australian citizenship by descent through registration for citizenship. The Australian Citizenship Act 1948 also empowers the Minister for Immigration and Ethnic Affairs to grant citizenship to children and enables children under the age of 16 years to be included in a certificate of Australian citizenship granted to their responsible parent.

Registration of births

279. Matters relating to the registration of births in Australia are governed by State and Territory legislation. All States and Territories require the registration of births, but the time within which this must be done varies. In Queensland, South Australia, Tasmania, the Northern Territory, Victoria and Western Australia, registration is required within two months. In New South Wales and the Australian Capital Territory, the relevant time is one month.

Name

280. All States and Territories require the child's name as part of the particulars to be furnished for registration of a birth. In South Australia, Queensland, Tasmania, the Australian Capital Territory, the Northern Territory, Western Australia and Norfolk Island there is no requirement that a first name be entered into the register at the time of registration. This may be added to the register at a later date. Provision also exists in most Australian jurisdictions for changes to occur in the registered name of a child in appropriate circumstances. Common law (to the extent that this has not been replaced by statute) also permits a change of name to occur by reputation and repute. In Western Australia the Child Welfare Act 1947 enables the Director-General of Community Development to give a child a name.

281. Recent Australian practice has been to move away from default registration of a child in the name of the father. The following two cases illustrate this fact. In the New South Wales Registry, the practice had existed of registering the surname of a child as that of the father in the case of parents married to each other with different surnames. This was the practice regardless of whether the mother consented. A recent decision of the New South Wales Equal Opportunity Tribunal in Ms L v Registrar of Births, Deaths and Marriages however, found this practice was a service to which the Anti-Discrimination Act 1977 applied and that it discriminated against the mother on the grounds of sex and marital status. The Tribunal observed that registration of the child's name in the event of disagreement between the parents could be resolved by the registration of the application received first.

282. Secondly, in a case in the Family Court (unreported, 18 August 1993), Warwick J considered the use of hyphenated surnames to be an appropriate remedy in relation to a dispute as to which surname was to be used by a child of a failed marriage. In that case, when the child was born he was given the name of the person regarded as his father, pursuant to the relevant Queensland legislation. The judge considered that merely because the wife herself had adopted her husband's surname while cohabiting

with him did not mean she was a party to the registration of the child under that surname. He found that:

> The real questions are as to the degree of identification of the child with a registered surname, and as to the difficulties or embarrassment for the child, if using a surname other than that by which he or she is registered.

Right to be known and be cared for

283. The Federal Government has introduced reforms to the Family Law Act 1975 which will replace the existing part of the Act which deals with children. The new part includes, as one of the principles underlying its object, 'children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together'.

284. Some States provide specifically for the right to be known and cared for. For example, the New South Wales Children (Care and Protection) Act 1987 states:

> Children, for the full harmonious development of their personalities need love and understanding and towards that end, should, whenever possible, grow up in the care and under the responsibility of their parents, but if that is not possible, in an environment of affection and moral maternal security and in the case of children of tender years, should not, except in exceptional circumstances, be separated from their parents.

285. The New South Wales legislation continues:

> Continuing contact between children and their parents should be encouraged in situations where, pursuant to legal proceedings, children have been separated from parents.

286. The South Australian Children's Protection Act 1933, while requiring the child's best interests to be the main consideration, requires serious consideration to be given to the desirability of keeping the child within his or her family and preserving and strengthening family relationships between the child, the child's parents and other members of the child's family, whether or not the child is to reside within his or her family.

(b) Preservation of identity (Article 8)

Article 8

1. ***States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.***

2. ***Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.***

Loss of citizenship

287. Loss of Australian citizenship is governed by the Federal Australian Citizenship Act 1948. If an adult loses citizenship this can affect his or her child. The main ways an adult Australian citizen ceases to be a citizen are if he or she:

- does any act or thing (other than marriage) the sole or dominant purpose of which and the effect of which is to acquire the citizenship of a foreign country;
- renounces Australian citizenship and his or her declaration of renunciation is registered; or
- is deprived of citizenship.

288. The Minister for Immigration and Ethnic Affairs can deprive a person of his or her citizenship if the person has:

- knowingly misrepresented or concealed a material particular in relation to the application for citizenship; or
- at any time after applying for citizenship, been convicted in Australia or overseas of an offence committed before his or her application for citizenship was approved and the person is sentenced to death or to imprisonment for life or for a period of not less than 12 months.

289. Under the Australian Citizenship Act 1948, a child under the age of 18 ceases to be an Australian citizen if:

- a responsible parent ceases to be a citizen because he or she has acquired another citizenship or renounced Australian citizenship and the child possesses the citizenship of another country; or
- a responsible parent ceases to be a citizen because he or she is deprived of citizenship and a direction is made that the child also cease to be a citizen.

290. However, in all cases, a child does not cease to be an Australian citizen if one responsible parent is still an Australian citizen at the time.

(c) Freedom of expression (Article 13)

Article 13

1. ***The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, or in writing or in print, in the form of art, or through any other media of the child's choice.***

2. ***The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:***

    (a) For the respect of the rights or reputations of others; or

    (b) For the protection of national security or of public order (ordre public), or of public health or morals.

291. In Australia, both adults and children have the right to hold opinions without interference. While, generally, everyone in Australia also has the right to freedom of expression and to seek, receive and impart information and ideas as they wish, freedom of expression is restricted to some extent by laws and practices. For example, there are some qualifications on freedom of expression to protect others from defamation. Children are subject to the same rights and freedoms as adults in this area.

292. The extent to which laws and practices might restrict freedom of expression is a matter which itself is subject to monitoring. The Human Rights and Equal Opportunity Commission, in areas of Federal responsibility, can receive complaints of violations of Article 19 of the International Covenant on Civil and Political Rights, and as discussed in Part A, general measures of implementation, under Article 13 of this Convention. Further, in Victoria, Western Australia and the Australian Capital Territory, for example, discrimination legislation enables complaints to be made on the ground of the holding or not holding of any lawful religious or political belief or view or engaging in or refusing or failing to engage in any lawful religious or political activities.

Defamation

293. As mentioned above, the honour and reputation of a person, whether adult or child, are substantially protected by the civil and criminal actions for defamation. Certain exceptions apply to the protection offered by defamation laws. These include exceptions for fair and accurate reports of certain public proceedings (which include parliamentary or court proceedings) or fair comment on matters of public interest.

Students

294. Communication in schools is not limited to oral and written expression. Students are exposed to a variety of techniques and media, such as video, sound recording and film, with which to express themselves. Local inter-school competitions, performances or exhibitions and popular talk back radio programs allow students access to a broad range of audiences. Further, special events such as the March 1995 news conference on youth issues with the Prime Minister provide students with an avenue for public debate.

295. As discussed further under Part G(a), Education, leisure and cultural activities, Education, initiatives by the Federal Government through the National Equity Program for Schools have been designed to improve the participation and achievement in schools of young people disadvantaged by geographic isolation, economic circumstances, severe physical disability or a background of residential care. Programs such as these facilitate expression by increasing language and literacy skills in Australian schools.

296. In the Australian Capital Territory, issues related to freedom of expression are addressed through the draft Curriculum Policy and the Curriculum Frameworks and draft statements of the Department of Education and Training. These documents provide guidance for schools in the development of their curricula. Relevant sections of the system documents include:

- activities which encourage students to focus on real life problems and solutions, develop creative thinking. Questions should be open-ended and aimed at developing flexible and original thinking, curiosity and imagination; and
- media studies cannot be taught on the assumption that the teacher's judgements of media products are the only correct judgements. While teachers must feel free to acknowledge their own tastes, these should not dictate to the students ... students must be encouraged to develop their own criteria for evaluating media products and be provided with the skills to do so.

(d) Access to appropriate information (Article 17)

Article 17

> ***States Parties recognise the important functions performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:***
>
> ***(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of Article 29;***
>
> ***(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;***
>
> ***(c) Encourage the production and dissemination of children's books;***
>
> ***(d) Encourage the mass media to have particular regard for the linguistic needs of the child who belongs to a minority group or who is indigenous;***
>
> ***(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Articles 13 and 18.***

297. Commentary in this section deals in turn with Federal and State censorship arrangements, regulation of children's television and electronic media and the encouragement of children's literature. Commentary on sub-articles 17(b) and (d) is included in Part H (d), Special protection measures, Children belonging to a minority or an indigenous group.

Protection - censorship

298. The Federal Government's censorship powers derive from section 51 of the Australian Constitution, the power to regulate overseas and interstate trade, and section 122, the power to make laws with respect to the Territories.

299. These censorship powers are defined in the Customs (Prohibited Imports) Regulations and the Customs (Cinematograph Films) Regulations (the Regulations);

the latter authorise the establishment of the Film Censorship Board (the Board) and the appeal body, the Film and Literature Board of Review (the Review Board).

300. Imported films for public exhibition are examined in terms of the Regulations to determine whether they should be registered. Once registered, they are classified by the Censorship Board in accordance with State or Territory laws under arrangements which have been in force with the Federal Government since 1949.

301. Federal, State and Territory Governments have agreed to a co-ordinated approach for the classification of home videotapes, publications and computer games, endorsing the Australian Capital Territory Classification of Publications Ordinance 1983 (the Ordinance) as a legislative model.

302. The 1949 Federal, State and Territory Government agreements (and succeeding agreements) and the arrangements set out in the preceding paragraph combine to provide a legal framework for the classification of films, videotapes, publications and computer games.

303. Notwithstanding the agreements and arrangements, some States retain reserve powers. Relevant Ministers in Western Australia and South Australia may vary decisions of the Censorship Board and the Review Board in relation to cinema films in their respective States; in Western Australia this power also extends to home videotapes. Western Australia, South Australia and Tasmania maintain Classification of Publications Boards which may vary decisions of the Censorship Board in relation to home videotapes; the South Australian and Western Australian boards may also vary decisions of literature classification officers (see below). The Tasmanian board operates that State's literature classification scheme.

304. The current censorship and classification scheme will be replaced in 1996 with the commencement of the operation of the Classification (Publications, Films and Computer Games) Act (the Act) passed by the Federal Parliament in March 1995. The Act will be supported by previously passed complementary State and Territory enforcement legislation. The new scheme, a result of recommendations made by the Australian Law Reform Commission in 1991, will provide a clearer and administratively simpler standard approach across all States and Territories for the classification of films, videos, publications and computer games.

Videos and films

305. In Australia, classification of cinema films, home videotapes and computer games is compulsory. Decisions of the Censorship Board in these areas are taken by

majority vote and against criteria set out in relevant legislation and in formally gazetted classification guidelines which are periodically updated to meet changing community standards. The Board's decision-making also gives effect to the fundamental principles of the National Classification Code:

- adults should be able to read, see and hear what they want;
- minors should be protected from material likely to harm or disturb them;
- everyone should be protected from exposure to unsolicited material they find offensive; and
- the need to take account of community concerns about:
    - depictions that condone or incite violence, particularly sexual violence; and
    - the portrayal of persons in a demeaning manner.

306. The Board is empowered to:

- refuse to register a film imported for public exhibition if, in the Board's opinion, it is 'blasphemous, indecent or obscene'; 'likely to be injurious to morality'; or 'undesirable in the public interest'.
- classify a film as:

    G - suitable for all ages;

    PG - parental guidance recommended for persons under 15 years;

    M15+ - recommended for mature audiences 15 and over;

    MA15+ - restrictions apply to persons under 15;

    R18+ - restricted to adults 18 years and over; or

    Refuse - refused classification.

- classify commercial videotapes as:

    G - suitable for all ages;

    PG - parental guidance recommended for persons under 15 years;

    M15+ - recommended for mature audiences 15 and over;

    MA15+ - restrictions apply to persons under 15 years;

    R18+ - restricted to adults 18 years and over;

    X - restricted to those 18 years of age and over, and may include explicit depictions of non-violent sexual acts involving consenting adults (videos in Australian Capital Territory and Northern Territory only); or

    Refuse - refused classification.

- classify computer games as:
  - G - suitable for all ages;
  - G8 - suitable for people over 8 years;
  - M - recommended for mature audiences 15 and over;
  - MA - restrictions apply to persons under 15; or
  - Refuse - refused classification.
- approve or refuse to approve a range of advertising material related to the above.

307. Literature classification officers attached to the Office of Film and Literature Classification classify publications for all States and Territories except Western Australia and Tasmania as:

- Unrestricted;
- Restricted - Category 1;
- Restricted - Category 2; or
- Refused classification.

308. When the Act comes into force this function will be assumed by the Classification Board (successor to the Censorship Board).

Enforcement

309. The Censorship Board's consumer advice about the content of non-G films and videotapes must, by law, be displayed with classification markings on the relevant cassettes and on related film and video advertising.

310. Enforcement of this requirement, and other related measures, is the responsibility of State and Territory authorities.

Other protection - electronic media

311. Children's Television Standards (CTS) made under the Broadcasting Services Act 1992 provide that programs broadcast during certain prime children's viewing hours must be classified for children. The object of the standards is that children should have access to a variety of quality television programs including Australian drama and non-drama programs. The criteria for classification of a children's (including preschool children's) program is that the program must be specifically for children, must be entertaining, well produced, enhance a child's understanding of the

world around them and be relevant for Australian children. This is discussed further under Material of Social and Cultural Benefit below.

312. The CTS require that each commercial television station must show at least 390 hours of children's programs annually. This includes 260 hours of C (for children) programs and 130 hours of P (for preschool children) programs per year. Each station must also show a minimum of 16 hours of new children's drama per year. The Australian Broadcasting Authority (ABA) has decided to increase the amount of C drama required to be shown by each station by 1998 to 40 hours per year.

313. In order to protect children from injurious material however, classified programs may not:

- demean any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, religion, or mental or physical disability;
- present images or events in a way which is unduly frightening or unduly distressing to children;
- present images or events which depict unsafe uses of a product or unsafe situations which may encourage children to engage in activities dangerous to them; and
- advertise products or services which have been officially declared unsafe or dangerous by a Federal authority or by an authority having jurisdiction within the licensee's service area.

314. Children's Television Standards in relation to the quality and quantity of advertisements directed at children must also be observed.

315. The Broadcasting Services Act 1992 also provides for industry codes of practice for programs, and complaint procedures, in relation to electronic media. Under these provisions, industry groups representing commercial and community television and radio broadcasting licensees are required to develop codes of practice relating to programming matters and complaints procedures. The codes may relate to, among other things, program classification, accuracy and fairness in news and current affairs, portrayal of sex and violence and vilification of minorities.

316. The codes of practice are then registered by the ABA. To register a code of practice the ABA must be satisfied that the code provides appropriate community safeguards for the matters covered by the codes, is endorsed by a majority of the providers of broadcasting services in that section of the industry, and members of the public are given an adequate opportunity to comment on the codes. The ABA has the power to impose mandatory program standards where it considers that codes of practice have failed or have not been developed.

317. Complaints regarding program or advertising content or compliance with an industry code of practice may be made, in the first instance, to the service provider. If a person has complained to the service provider and is dissatisfied with the response or has not received a response within 60 days, the complaint may be taken up with the ABA. The ABA must investigate all complaints which are correctly referred to it.

318. In addition to being required to develop codes of practice, the Broadcasting Services Act 1992 requires that commercial broadcasters ensure that the codes of practice:

- apply the film classification system administered by the Office of Film and Literature Classification;
- provide for methods of modifying films having particular classifications so that the films are suitable to be broadcast;
- require that films classified as M and MA may only be broadcast at certain times (these being times when children are unlikely to be watching television);
- require that films classified M and MA do not portray material that goes beyond the previous AO classification criterion; and
- provide for advice to consumers indicating the content of M and MA programs. The national broadcasters (ABC and SBS) also apply codes of practice in line with film classification system and advice to consumers.

319. In addition, films that have been classified as X or have been refused classification by the Office of Film and Literature Classification cannot be broadcast on commercial television while R rated films cannot be broadcast on commercial or national television unless suitably modified.

320. Like free-to-air broadcasters, pay television licensees are prohibited from transmitting programs classified X or programs which have been refused classification by the Office of Film and Literature Classification. Pay television licensees may also not broadcast programs classified R until the ABA has, on the basis of extensive research, recommended and the Parliament has, approved the broadcasting of such programs. A further condition is that access to R-classified programs on pay television be restricted by disabling services to enable parents to prevent their children viewing such programs.

321. The ABA has completed the necessary research and has recommended that R-classified programs be permitted on pay television. However, the Senate Select Committee on Community Standards Relevant to the Supply of Services Utilising Electronic Technologies has examined this issue and recommended that R-classified

programs not be permitted on pay television. The Committee has indicated that it is prepared to reconsider its recommendation if the R classification is overhauled.

322. The Federal Government is currently considering the issue of the possible broadcast of R-classified programs on pay television in the light of the above recommendations. The Government's primary concern in this matter is the right of children to be protected from potential harm which may arise from exposure to the broadcast of unsuitable material.

Material of social and cultural benefit

Electronic media

323. The quality of children's programming on commercial television has been a major issue since the start of television in Australia. Children are explicitly recognised in the Broadcasting Services Act 1992 under which Children's Television Standards (CTS) are set by the Australian Broadcasting Authority (ABA).

324. The current CTS which came into effect on 1 January 1990 have as their objective:

> granting children access to a variety of quality television programs made specifically for them, including Australian drama and non-drama programs.

325. The CTS oblige commercial television licensees to broadcast minimum annual quotas (equivalent to approximately one hour per day) of preclassified children's programs. Each commercial broadcaster is required to show at least 390 hours of classified children's programs per year. Of this, 260 hours must be suitable for primary school children and 130 hours must be suitable for preschool children. To be classified as suitable by the ABA, programs are required to meet the following criteria, which are set out in the CTS. The programs must:

- be made specifically for children;
- be entertaining;
- be well produced (script, direction, production, etc);
- add something to a child's understanding and experience; and
- be relevant for Australian children.

Radio

326. Triple J is a youth radio network which is operated by the Australian Broadcasting Corporation, an independent statutory authority, which receives funding from the Federal Government. The network is targeted exclusively to the youth audience and has approximately 1.5 million listeners. The network now has 44 regional centres which enables it to reach a large youth audience in regional Australia.

327. Triple J provides a diverse music mix together with specialist information programming. In 1994 Triple J's Morning program expanded coverage of news and current affairs and continued as a forum for young Australians to debate issues. Information programs produced by specialist teams included the retrospective 10,000 Days that Shook the World; the Drugs series and Great Moments in Science. Triple J also raises understanding of global issues by participating in major community events, for example a celebration of World Environment Day in cooperation with the Federal Department of Environment Sport and Territories and the Real Appeal, a weekend long radiothon which raised over $335,000 to aid the global refugee crisis.

Literature

328. The Australia Council is the agency of the Department of Communications and the Arts charged with fostering and enhancing Australian culture. The Literature Board of the Australia Council promotes the development of Australian creative writing through book publishing subsidies and individual writer's grants. The Literature Board recognises the importance of providing high standard creative opportunities for the involvement of young people in literature. Accordingly, one of the access and equity policies of the Literature Board is to foster the development and training of young writers. The Literature Board also encourages the development of an Australian literature which reflects the multicultural nature of Australian society.

329. In the non-government sector, the Children's Book Council of Australia is a voluntary organisation which provides incentives for Australian writers, illustrators and publishers to produce world class literature for children. The organisation began in November 1945. Its aims are, inter alia, to:

- improve the range and quality of children's books;
- disseminate information to parents, children, teachers, librarians, and the community in general about children's books and children's reading;
- recognise the importance of children's literature in children's language development;
- encourage children's reading skills and enjoyment both for recreational and study purposes;

- promote informed discussion and debate about children's book and children's reading;
- give recognition to authors, illustrators, and publishers of children's books and support quality standards in children's literature; and
- encourage improvement of libraries and library services, especially for young children, and to encourage parents and children to use them.

330. Public libraries throughout Australia facilitate children's access to literature. The Department of Health and Community Services in the Northern Territory furthers the intention of this Article by providing a number of children's services which include access to a toy library, playgrounds and various multi-functional services. The Department has funded organisations such as the Nhulunbuy Play Group, the Pularumpi Play Group, the Northern Territory Play Group Association. These groups provide services such as children's books, educational aids and toys, exposure of children to group activities and excursions and other developmental child services. Such services promote the social and cultural benefit to children and go toward improving their general well being.

331. In Victoria, an information service and shopfront Information Victoria provides a focus for access by the public, including children and young people, to information on Victorian Government policies and programs. The information service handles inquiries by telephone, mail and personal visit, and is providing an increasing amount of school project material. The Victorian Office of Youth Affairs also aims to ensure that young people have access to appropriate information.

(e) Freedom of thought, conscience and religion (Article 14)

Article 14

1. ***States Parties shall respect the right of the child to freedom of thought, conscience and religion.***

2. ***States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.***

3. ***Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.***

332. The 1991 Australian census recognised over 70 religions adhered to by Australians. All of the major world faiths are represented in Australia as are smaller religions such as the Society of Friends, the Baha'i faith and Caodaism. Approximately 77 per cent of Australians who took part in the census identified with a form of religious belief. Over half of the respondents identified themselves as either an Anglican or Catholic.

333. In Australia freedom of thought, conscience and religion, and its manifestation, are matters left largely to individuals. Little legislation exists to impose restrictions on the exercise of such freedoms, either by adults or children, nor is there any governmental coercion to change or renounce any view or belief. Legislation which exists in regard to freedom of religion and freedom to manifest religion is outlined below.

334. Some minor limitations do exist on the freedom of persons to exercise their beliefs fully. Most jurisdictions have legislation to provide that if a parent refuses (usually on religious grounds) to give consent to a child receiving a blood transfusion, and two or more legally qualified medical practitioners believe that a blood transfusion is necessary to save the child's life, a legally qualified medical practitioner who performs the transfusion upon the child, will be deemed for all purposes to have performed the transfusion with the authority of the person legally entitled to authorise the transfusion.

Freedom of religion

Constitutional guarantee

335. The Australian Constitution does not contain a specific head of legislative power to enable the Federal Government to legislate directly on the subject of religion or belief. Rather, section 116 of the Constitution provides:

> The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

336. Section 116 is directed only to the Federal Government and does not inhibit the power to legislate on matters of religion and belief in the States. State law in relation to religious freedom is outlined below.

Human Rights and Equal Opportunity Commission

337. The Human Rights and Equal Opportunity Commission (HREOC) can receive complaints of violations of religious freedoms under Article 18 of the International Covenant of Civil and Political Rights and, as mentioned above in Part A (a), General measures, under Article 14 of this Convention.

338. From February 1993, HREOC also has had the power to: inquire into acts or practices of the Federal Government which are inconsistent with the rights contained in the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; examine Federal legislation to determine whether it is consistent with the rights in the UN Declaration and report to the Federal Attorney-General on action that should be taken by the Federal Government; and conduct research and educational programs and to promote understanding and acceptance to these rights.

339. The UN Declaration is a more modern and detailed expression of religious freedoms. The Declaration also reflects the important role that a family has in regard to the way in which children are to be brought up. The Declaration recognises that parents have the right to organise life within the family in accordance with their religion or belief and that every child shall enjoy the right to education in the matter of religion or belief in accordance with the wishes of his or her parents, bearing in mind the best interests of the child principle.

States and Territories

340. In Tasmania, the Constitution Act 1934 provides for the following guarantee of freedom of conscience and religion:

> Freedom of conscience and free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.
>
> No person shall be subject to any disability, or be required to take any oath on account of his religion or religious belief and no religious test shall be imposed in respect of the appointment to or holding of any public office.

341. The Victorian Equal Opportunity Act 1995 enables complaints to be made alleging discrimination on the grounds of religious belief or activity or political belief or activity. The Act also makes specific provision for complaints of alleged discrimination to be lodged by children.

342. The Western Australian Equal Opportunity Act 1984 also enables complaints of discrimination to be made, inter alia, on the ground of religious or political conviction.

343. In the Northern Territory, the Anti-Discrimination Act 1992 provides that there shall not be discrimination on the ground of a person's religious belief or activity in education, accommodation, work, services and facilities, insurance and superannuation and goods.

344. In the Australian Capital Territory, the Discrimination Act 1991 provides that it is unlawful to discriminate on the ground of religious, or political, conviction in a number of areas including education.

345. In New South Wales the Anti-Discrimination Act 1977 does not provide for a ground of unlawful discrimination on the basis of religion or religious belief. This reflects the New South Wales Governments broader policy that anti-discrimination law should not interfere with the basic right of religious organisations to propagate religion in accordance with their religious doctrines. The New South Wales Law Reform Commission is, however, currently examining the possible coverage of religious discrimination in the course of its current reference concerning the Anti-Discrimination Act 1977. The final report of the Commission is due for release in late 1995.

Freedom to manifest religion

346. In Australia, the freedom for a child to manifest his or her religion or belief is subject to any restriction which may arise under the ordinary laws of Australia. No laws exist specifically to prevent the exercise of a child's right to freedom of religion. From time to time concerns have been expressed that the activities of certain religious sects may infringe the rights and freedoms of other members of the community. The Federal Government takes the attitude that it is not appropriate to legislate to restrict the activities of religious sects. However, to the extent that such activities would breach existing laws, in particular, criminal laws, then such matters should be dealt with as breaches of the law are normally dealt with, namely, by the courts.

Religious education

347. The right of parents to bring their children up in their own faith has been recognised in the Australian education system. Education in Australia is provided across all jurisdictions by both Government and non-government schools. A high per cent of non-government schools are run by churches or religious communities. These

schools are recognised as playing an important role in the education of children in Australia.

348. In the High Court decision in the case of Attorney-General for Victoria; ex rel. Black v the Commonwealth (1981) 55 ALJR 155, legislation under which the Federal Government provides funds to the States to assist education in both Government and non-government schools was upheld as constitutionally valid. The High Court rejected the argument that this legislation, in so far as it resulted in benefits for schools conducted by or on behalf of religious bodies, infringed section 116 of the Constitution (see section above on the Constitutional guarantee). The High Court interpreted section 116 as prohibiting the Federal Government from making any law for conferring on a particular religion or religious body the position of a State (or national) religion or church. The particular laws under challenge were directed to the advancement of education and did not have the purpose or effect of setting up any religion or religious body as a State religion or a State church.

349. There is provision in State and Territory legislation for children to receive general religious teaching in Government schools. For example, the New South Wales Education Reform Act 1990 provides for non-sectarian secular instruction. Secular instruction is taken to include general religious education as distinct from dogmatic or polemical theology.

350. Thus the New South Wales Education Reform Act 1990 allows for special religious instruction to be provided by recognised representatives of approved religious persuasion for children whose parents want them to receive it. Parents who do not wish their children to receive religious instruction have the right to withdraw their children from any lesson if they object to the content. Under the provisions of the Education Reform Act 1990 recognised representatives of approved religious persuasion are entitled to attend Government schools during school hours to instruct children of their religious persuasion for a period of not more than one hour each week.

351. Under the Victorian Education Act 1958 attendance at any class for religious instruction is not compulsory for a child where his or her parents indicate that the child should not attend.

(f) Freedom of association and of peaceful assembly (Article 15)

Article 15

1. ***States Parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly.***

2. ***No restrictions may be placed in the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.***

Freedom of association and peaceful assembly

352. There are few restrictions in Australia on the freedom of association and peaceful assembly. Children enjoy the same rights and responsibilities as adults in this area.

353. Of relevance to this right is the Queensland Peaceful Assembly Act 1992 which commenced on 23 July 1992. Prior to this Act, public processions were subject to permit requirements under the Traffic Act 1949. The objects of the Act are to:

- recognise the right of peaceful assembly;
- ensure, so far as it is appropriate to do so, that persons may exercise the right to participate in public assemblies;
- ensure that the exercise of the right to participate in public assemblies is subject only to such restrictions as are necessary and reasonable in a democratic society in the interest of:
    - public safety;
    - public order; and
    - the protection of the rights and freedoms of other persons; and
- ensure that the rights of persons to participate in public assemblies may be exercised without payment of a fee, charge or other amount for a licence, permit or other authorisation.

354. Health legislation across Australia does not generally interfere with these freedoms except to the extent it contains rarely used quarantine provisions. The provisions are necessary for the purpose of protection of public health and therefore

comply with clause 2 of Article 15 of the Convention. For example, in Victoria, the Health Act 1958 enables, inter alia, an order to be made imposing restrictions on a person's behaviour or movements where the Chief General Manager of the Health Department Victoria is satisfied that:

- the person has an infectious disease or has been exposed to an infectious disease in circumstances where a person is reasonably likely to contract the disease; and if infected with that infectious disease, the person is likely to transmit the disease; and
- there is a serious risk to public health; and
- if counselling is appropriate, having regard to the nature of the disease, the person has been counselled but without success in achieving appropriate and responsible behaviour change.

355. In Victoria there is also provision in the Mental Health Act 1986 for involuntary detention. However, the Act contains safeguards against abuse and rights of appeal.

Right to form trade unions

356. The right to form and join trade unions and associations fully exists in Australia. It applies equally to people under the age of 18 as to adults. There are no substantive or formal conditions which must be fulfilled by workers' organisations when they are being established. However, there are, of necessity, some conditions which must be satisfied if an association decides to register under the trade union legislation. Under the Federal Industrial Relations Act 1988 (as amended in 1990, 1993 and 1994), the voluntary registration requirements include formal requirements such as the minimum size of the association to be registered and its membership composition, ie employees or employers and certain other limited classes of persons (including the officers of the association concerned).

357. As registration is voluntary, the impact of the legislation is regulatory and not restrictive of the right to freedom of association as provided for in the Article. Further, freedom of association in Australia is demonstrated not only by the absence of any legal restrictions on the citizen's right to associate with others for any lawful object, but also by the recognition given to trade unions as an important force in Australian society. Their right to existence and freedom to organise in the interests of their members is accepted by the Australian community.

Unlawful associations

358. Certain associations are unlawful under Australian law. For example the Federal Crimes Act 1914 provides that associations which by their constitution or propaganda advocate or encourage the overthrow, by force or violence, of the

Constitution or established Federal or State Governments, or are associated with associations having such a purpose, or advocate or encourage the doing of a seditious act, are unlawful. Membership of, or assistance provided to, such an association generally constitutes a criminal offence under the Act. Some Australian jurisdictions also have legislation which makes it an offence to consort habitually with reputed criminals, known prostitutes or persons who have been convicted of having no lawful means of support. The purpose behind this legislation is to prevent crime by discouraging criminal associations. Such legislation is considered to be necessary in the interests of public safety and order and the rights and freedoms of others.

(g) Protection of privacy (Article 16)

Article 16

1. ***No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.***

2. ***The child has the right to the protection of the law against such interference or attacks.***

Federal matters

Information privacy

359. The Australian Constitution does not contain a specific head of legislative power to enable the enactment of Federal legislation to provide general protection for the privacy of the child or privacy in general. However, the Constitution provides that the Federal Government may legislate with respect to matters such as communications (being postal, telegraphic, telephonic and like services), corporations, banking, foreign affairs, census and statistics. These are areas that potentially raise important privacy issues. The Federal Government is also concerned with the regulation of its own administration, including Federal law enforcement agencies. As a general rule, other areas of privacy concern fall within the responsibility of each State and Territory.

360. The collection, storage, use and disclosure of personal information held by Federal Government departments is subject to intra-departmental guidelines. Within the Department of Social Security for example, the Privacy and Review Branch in the Legal Services Group operates as a consultative body advising on questions relating to information management. Furthermore, the confidentiality provisions contained in the Social Security Act 1991 protect the personal client information held by the

Department of Social Security from unauthorised access (including unauthorised computer access), use, solicitation or disclosure.

Privacy Act 1988

361. In addition to the above, in 1988 the Federal Government enacted the Privacy Act 1988 which, among other matters, protects the information privacy of children and adults alike in their dealings with Federal Government departments and agencies. Important impetuses for the enactment of the Act were Australia's ratification of the International Covenant on Civil and Political Rights and the recommendations of a report on privacy by the Australian Law Reform Commission.

362. The Privacy Act 1988 protects the information privacy of individuals in relation to their dealings with most Federal Government departments and agencies by establishing mandatory rules of conduct for the handling of records of personal information by those organisations. These rules of conduct, called Information Privacy Principles, regulate the collection, storage, use and disclosure of, and access to and correction of, personal information about individuals. They are based on Organisation for Economic Cooperation and Development Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data.

363. Personal information is defined in the Privacy Act 1988 to mean information or an opinion, whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent or can reasonably be ascertained from the information or opinion.

364. The Privacy Act 1988 creates the office of the Privacy Commissioner. The Privacy Commissioner's functions include:

- examining and reporting on legislative or other proposals which may have adverse implications for the privacy of individuals;
- researching and monitoring relevant developments in data processing and computer technology;
- promoting an understanding of, and encouraging compliance with, Information Privacy Principles through publishing guidelines, delivering educational programs; and
- investigating acts or practices of Federal Government departments and agencies that may breach an Information Privacy Principle, both in response to complaints by individuals and as part of the Privacy Commissioner's monitoring role.

365. The Privacy Act 1988 leaves open such rights as would normally be available to restrain an interference with privacy by other civil proceedings, for example, by the grant of an injunction. In the case of a denial of access to, or refusal to correct, a

document containing personal information, there are the existing remedies under the Freedom of Information Act 1982, including recourse to the Administrative Appeals Tribunal.

Freedom of Information Act 1982

366. Privacy protection at a Federal level is also afforded to Australian adults and children alike, by the right provided by the Freedom of Information Act 1982 to gain access to and seek correction of records of personal information held by Federal departments and agencies.

367. This Act provides that a document is an exempt document (and therefore that it need not be released in response to a request for access) if its release would involve the unreasonable disclosure of personal information about any person.

368. This Act also provides for a consultation mechanism prior to the release of a document containing personal information about a person. This mechanism applies where a request is received for access to such a document, and it appears to the officer dealing with the request that the person concerned might reasonably wish to contend that the document is an exempt document. In such circumstances, the officer must not grant access to the document unless (to the extent that it is reasonably practicable to do so) he or she has given the person concerned an opportunity to make submissions and has had regard to those submissions. There is also provision for the person concerned to seek review of a decision that the document is not exempt.

369. The Minister for Justice has recently initiated a review of the Federal Freedom of Information Act 1982. The review is to be jointly conducted by the Australian Law Reform Commission and the Administrative Review Council. It will consider, among other matters, the possible extension of the application of the Freedom of Information Act 1982 to private sector bodies. The review is expected to be completed by 31 December 1995.

State and Territory matters

370. The Federal Privacy Act 1988 also applies, with limited exceptions, to all Australian Capital Territory agencies. In the Australian Capital Territory, the Ombudsman Act 1989 also enables complaints against officials involving their actions to be comprehensively investigated. Freedom of Information legislation in the Australian Capital Territory is similar to Federal legislation described above.

371. In New South Wales, a Privacy Committee, established in 1975, conducts research into privacy issues, makes reports and recommendations to the Government and non-Government agencies and investigates complaints from private individuals or their representatives. Although the Committee has some statutory powers to require people to provide it with information, it endeavours to resolve all complaints by negotiation and conciliation. It has no power to enforce its recommendations. The Committee has issued numerous reports and guidelines to promote awareness of privacy issues.

372. The Privacy and Data Protection Bill 1994 was introduced into the New South Wales Parliament in April 1994. A Select Committee on the Privacy and Data Protection Bill was subsequently appointed to inquire into privacy and data protection and other matters.

373. In Queensland, the Privacy Committee Act 1984 established a Privacy Committee to investigate issues of privacy and provide advice to the Attorney-General. The Privacy Committee Act 1984 expired on 14 June 1991. Queensland is currently considering establishing a new privacy authority implementing information privacy principles for public sector agencies. The Invasion of Privacy Act 1971 protects against audio surveillance. Section 144 of the Children's Services Act 1965 creates a strict duty of secrecy in relation to the functions of officers and information they receive under that Act. The Adoption of Children Act 1964 has similar provisions.

374. In South Australia, a Privacy Committee was established in 1989. Among its other functions, the Committee is vested with responsibility for ensuring compliance with the information privacy principles based on those contained in the Federal Privacy Act 1988. The South Australian Adoption Act 1988 also has a number of provisions which provide for the privacy of the child (see Part E (g), Family Environment and alternative care, Adoption).

375. The Tasmanian Department of Community Services has a strong privacy policy. The Adoption of Children Act 1988 and the Child Protection Act 1974 have strong confidentiality provisions. The health and education areas have a strong emphasis on a child's right to privacy.

376. In Victoria, under the Children and Young Persons Act 1989, it is an offence to reveal confidential information contained in a report that a person has access to without the consent of the person whom the report concerns.

377. The Children's Court of Western Australia Act 1988 prohibits the public release of any information about proceedings that is likely to identify a child. Adult courts are able to suppress the publication of identifying material when children appear before them or when the identification of adults would adversely affect children. The Young Offenders Act 1994 makes it an offence for a person to divulge any personal information obtained by reason of any function that person has in the administration of the Act.

378. Information in the possession of some State Governments may be requested by individuals concerned under State freedom of information legislation. The Queensland Government introduced freedom of information legislation in 1992. The Tasmanian Government enacted the Freedom of Information Act in 1991. Freedom of information legislation has been in operation in the Australian Capital Territory since 1989 and in Victoria since 1983. Alternately in Queensland, a written statement of reasons may be available through litigation under judicial review legislation.

379. The Western Australian Freedom of Information Act 1992 was enacted in 1992 and came into effect on 1 November 1993. The Act includes similar provisions to the Federal Freedom of Information Act 1982, as regards disclosure of personal information about an individual other than the applicant. There is a requirement to consult with third parties who have a right of complaint to the Information Commissioner if they object to a decision by an agency to release personal information about them. The personal information exemption is the one most frequently cited by agencies when refusing requests for information under the Act. Children (represented by their parents or guardians) have the right to be consulted and object to release of their personal information under the legislation. An agency may also refuse access to a document if it is satisfied that access would not be in the best interests of the child and that the child does have the capacity to appreciate the circumstances and make a mature judgment as to what might be in his or her best interests.

380. At the present time there is no all-encompassing privacy or data protection legislation operating in Western Australia which applies to State public sector agencies. Therefore intentional or accidental breaches of personal privacy which may occur outside the freedom of information process are not subject to investigation, remedies or sanction prescribed by legislation. The Western Australian Government has commenced a process to consider options for ensuring privacy of individuals in compliance with data protection principles.

Other privacy protections

381. Privacy and criminal arrest and investigation procedures are discussed under Part H (b) (ii), Special protection measures, Children - conflict with the law, below.

Family

382. There is no general rule of law that grants the family, as a distinct entity, freedom from arbitrary or unlawful interference. As in the case of all private individuals, intrusion into the lives of members of a family requires lawful justification. Thus, it is unlawful for anyone to remove a child from the custody of a parent except in the execution of a proper court order or other lawful authority (for example, under the child welfare legislation referred to elsewhere in this report). To do so would amount to one of a number of criminal offences and would entitle the parent to seek an appropriate court order to have the custody of the child restored.

383. A physical assault on a member of a family (as in the case of any individual) entitles that member to perform acts of self defence and allows other persons, including other members of the family, to assist. However, physical assaults perpetrated by family members on other family members would constitute a criminal offence which would provide lawful justification in taking action to protect those family members under threat of further violence.

384. A number of criminal and civil remedies exist in regard to invasions of privacy in the home. The civil remedy of trespass serves to prevent a person entering upon another's property without lawful justification. The civil law remedy of nuisance gives further protection over enjoyment of land by curtailing the emission of noise, smoke and other nuisances from adjoining properties. Criminal offences such as offensive behaviour, breach of the peace or offences against environmental laws may also be relevant. In all States it is also unlawful to demand payment for unsolicited goods and services.

Correspondence

385. By virtue of criminal offences, including the offences of tampering with, stealing or wrongfully detaining the mail, under the Federal Crimes Act 1914, interference with the mail is a rare event. Furthermore, the Australian Postal Corporation (Australia Post) is required under the Australian Postal Corporation Act 1989 to perform its functions in a way consistent with Australia's obligations under any treaty.

386. The regulations made under the Australian Postal Corporation Act 1989 enable persons authorised by Australia Post to open mail in a limited number of circumstances, for instance:

- repairing a damaged item;
- where there is a reasonable belief that an article contains dutiable items or contraband;
- where there is a reasonable belief that the sending of an article involved some illegal act; or
- where the article is undeliverable so that it may be delivered or returned to the sender.

387. Where mail has been opened and on forwarded for delivery, a notice must be placed on the envelope disclosing that it has been opened by Australia Post and giving the reason for such opening. Mail can also be opened at the request of Customs officers.

Press

388. Privacy is also protected to some extent in Australia by voluntarily imposed media restraints. For example, The Statement of Principles of the Australian Press Council indicates support for due respect for private rights and sensitivities, an obligation to ensure the truth and exactness of the statements, and requires that news obtained by dishonest or unfair means or the publication of which would involve a breach of confidence should not be published.

389. Similarly, each member of the Media Entertainment and Arts Alliance adheres to a Journalists Code of Ethics which requires him or her to 'respect all confidences received in the course of his (or her) calling' and to 'use only fair and honest methods to obtain news, pictures and documents'. The Australian Press Council has established a procedure whereby persons may complain against a newspaper or periodical and seek a remedy against the publication concerned.

390. Currently journalists are seeking an absolute or qualified right to be able to refuse to answer questions lawfully put to them in court proceedings or by other bodies with the power to require evidence to be given. In this context, the rights and obligations of the media are being reviewed by the Senate Standing Committee on Legal and Constitutional Affairs.

Family Law Act

391. On 30 June 1994, the Attorney-General introduced the Family Law Reform Bill to amend Part II (Marriage Counselling Organisations), Part III (Counselling and

Reconciliation) and Part IIIA (Mediation and Arbitration) of the Family Law Act 1975. The Bill extends the immunity and secrecy provisions that presently exist for court based personnel to community mediators. That is, evidence of anything said, or any admission made, at a meeting or conference conducted by a court, community or private mediator, or a family and child counsellor, would not be admissible in any court, Federal or State, or in any proceedings. The Bill also requires community counsellors to take an oath that they will not disclose anything said in a counselling session.

(h) The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Article 37 (a))

Article 37 (a)

> ***States parties shall ensure that:***
>
> *(a)* ***No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.***

392. Torture and other cruel, inhuman, or degrading treatment or punishment is not tolerated in Australia and constitutes a criminal offence and civil wrong in all Australian jurisdictions. Australia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 8 August 1989 and the Convention came into force for Australia on 7 September 1989. Australia submitted its first report to the Committee Against Torture on 9 September 1991 (UN Document No CAT/C/9/Add.8). The second report under the Convention is being finalised and will be submitted to the Committee in 1996.

General provisions

Criminal law

393. In general, provided the requisite degree of intention or criminal negligence is proved, any use of force against a child is a criminal offence constituting assault or a more serious crime. The exceptions to this statement include the use of force:

- in self defence, defence of another, or the defence of property, where no more force than is necessary is used;

- in the prevention of crime, or the effecting of a lawful arrest, where no more force is used than is necessary;
- in the course of the lawful correction of a child by its parents, teacher or person in loco parentis, provided no more force is used than is reasonable under the circumstances; and
- where the use of force can be consented to, as in a professional boxing contest.

394. In no circumstances may force be used in obtaining a confession, or otherwise for intimidation or coercion. A confession by an accused person is only admissible in his or her trial if it was obtained voluntarily. Police officers are instructed that no threat or inducement may be made to obtain a confession. The courts in all Australian jurisdictions have a wide discretion in criminal cases not to admit any evidence obtained unlawfully or unfairly where to admit such evidence would operate unfairly against the accused. For further discussion see Part H (b), Special protection measures, Children in conflict with the law, below.

395. A child's rights not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment are addressed specifically in the Australian Capital Territory. In 1990, a new section was added to the Crimes Act 1900 to create an offence for committing acts of torture. The offence covers acts where severe mental or physical pain or suffering is inflicted for the purposes of obtaining information, punishment, intimidation or coercion or for any reason based on discrimination of any kind. The offence applies to the activities of public officials or those acting at the instigation of or with the consent or acquiescence of a public official. The offence is in accord with this Article of the Convention and Article seven of the International Covenant on Civil and Political Rights.

396. All jurisdictions, including the Territories of Christmas Island and Cocos (Keeling) Islands, provide for a system of compensation for criminal injuries. For example, under the Queensland Criminal Code, compensation may be awarded to those persons including children who suffer injury, whether physical or mental, where a person is convicted of any indictable offence. For the purposes of the scheme, injury means bodily injury or mental nervous shock. The amount of such compensation is primarily recoverable from the criminal offender but, in practice, is generally met by means of an ex gratia payment by the Crown. By law the sums awarded for physical injuries parallel the level of damages awarded under Worker's Compensation legislation. Psychological or mental injuries are subject to an upper level of $20,000.

397. In Victoria the Crimes Compensation Tribunal operates under the Criminal Injuries Act 1983 and provides for the right of compensation to persons including children who have suffered injury or trauma and to the dependants of persons killed as

a result of criminal activity. Decisions are based on whether on the balance of probabilities a crime has been committed irrespective of whether a criminal prosecution has been commenced or conviction obtained. While there is a provision in the Act to recover compensation from the offender, in practice nearly all compensation awarded comes out of consolidated funds. An applicant is entitled to a maximum award of $50,000. Amounts awarded to children who in the opinion of the tribunal are unable to administer their own finances are placed in trust until they reach their maturity.

398. In South Australia criminal injuries compensation payments are made where a person has suffered physical or mental injury, which terms include pregnancy, mental shock and nervous shock as a result of a crime. Compensation is paid by the State out of a special Criminal Injuries Compensation Fund, which is partly financed by levies paid by offenders. Money paid by the State is recoverable from the offender. Compensation may be payable even though no person has been convicted of the offence. Further, the Attorney-General may make an ex gratia payment where a person, including a child, is not otherwise eligible for an award. The maximum amount of an award is $50,000.

399. In Western Australia the maximum amount of compensation payable under the Criminal Injuries Compensation scheme to victims of crimes is currently as follows:

- $20,000 in respect of any injury or loss suffered in consequence of an offence or an alleged offence committed before 1 July 1991; or
- $50,000 in respect of any injury or loss suffered in consequence of an offence or alleged offence committed on or after 1 July 1991.

400. Other States also have criminal compensation schemes.

401. In Norfolk Island, a court may, in addition to any penalty imposed on a convicted person, order the offender to make reparation to a person, by way of money payment or otherwise, in respect of a loss suffered by the person as a direct result of the offence.

Civil (non-criminal) law

402. In addition to the right to statutory damages, victims of crime or the relatives of a deceased victim have the right, in all jurisdictions, to bring an action in tort for damages against the transgressor or some other person or agency vicariously liable for the transgression (such as an employer, including Governments). Damages may be awarded for physical injury, nervous shock, medical or other expenses and financial loss.

Particular cases

Parental punishment

403. Parents, or persons having the custody of children, have a legal duty to care for their children or the children in their custody. They commit a criminal offence if they neglect them or omit to act to prevent injury to them. One difficulty, however, is that offences of this kind against children may remain undetected because of reluctance or inability of the children concerned to reveal injuries or because those persons who become aware of cases of child abuse do not wish to become involved. Sometimes this may be because they consider this to involve problems of respect of privacy and the integrity of the family unit. This problem has been addressed by action taken in regard to child abuse. Child abuse issues are discussed further under Part E (i), Family environment and alternative care, Abuse and neglect, below.

404. At present, lawful correction or lawful chastisement by parents is a common law defence to an action for assault. The criminal legislation of Tasmania, Queensland and Western Australia each contains a version of this defence. When the issue was reviewed in Queensland in 1992 the Criminal Code Review Committee recommended that the defence be maintained.

405. While primarily a matter for the States, the status of the lawful correction or lawful chastisement by parents defence is currently under consideration by the Federal Government as part of the non-fatal offences against the person chapter of a Model Criminal Code, which is being developed jointly by the Federal and State and Territory Governments. The Model Criminal Code Officers Committee (made up of representatives from all jurisdictions) is in the process of preparing a discussion paper on the issue. In June 1995 the Federal Department of Human Services and Health, under the auspices of the National Child Protection Council released a discussion paper titled The Legal and Social Aspects of the Physical Punishment of Children. The Paper considers law and policy relating to the physical punishment of children in the home, schools, juvenile detention centres and alternative and substitute care facilities. The Paper also covers the beliefs and practices relating to the physical punishment of children.

School punishment

406. In 1990 the National Committee on Violence recommended that educational authorities develop constructive, non-violent methods of social control to replace corporal punishment. The responses to these recommendations from the States and

Territories make it clear that all Australian jurisdictions favour rigorous controls over, if not the outright prohibition of, corporal punishment in schools.

407. The law relating to punishment in schools varies in different jurisdictions and as between independent and Government schools. Children can be physically disciplined by their teachers by way of punishment in independent schools in all States.

408. With respect to Government schools, corporal punishment is prohibited in the Australian Capital Territory, New South Wales, Victoria, Queensland and South Australia. In the Australian Capital Territory, corporal punishment has not been permitted in public schools since 1988.

409. The Australian Capital Territory Department of Education and Training policy states that students must not be subjected to physical abuse of any kind including all deliberate actions undertaken with the intention of causing physical pain or discomfort as a form of punishment of a student. The policy also states that it may be expected that school staff may take necessary or reasonable action to restrain a student from acts or behaviour dangerous to themselves or to any other person. In Victoria, a regulation under the Education Act 1958 completely prohibits the use in Government schools of any corporal punishment, which is broadly defined to include actions causing physical discomfort and throwing missiles. School discipline is administered in a manner aimed at encouraging students to take increasing responsibility for their own decisions.

410. All schools in South Australia develop a school discipline policy based on Education Department documentation School Discipline - The Management of Student Behaviour. The emphasis is on young people taking responsibility for their own actions with a sense of self-discipline and a respect for the rights of others. Students, teachers and parents work together to determine and spell out acceptable and unacceptable behaviour for students. In Queensland, the Department of Education also focuses on developing relationships, communication and self esteem skills in an ethical way. A second focus is on behaviour management for students who need intervention.

411. In the other Australian States, it is generally lawful for moderate and reasonable corporal punishment to be administered for serious school offences. Regulations applicable to Government schools closely proscribe the use of corporal punishment - restricting the persons by whom and the reasons for which it can be administered and stipulating the lawful forms of punishment. It is current New South Wales

Government policy to review provisions relating to corporal punishment in public schools.

412. In all jurisdictions, children subjected to excessive or otherwise unlawful corporal punishment have a civil right of action for damages against the teacher or school. Teachers who administer unlawful corporal punishment are also liable to be prosecuted for assault.

Treatment in detention

413. In New South Wales the Children (Detention Centres) Act 1987 contains various provisions which prohibit inhuman or degrading punishments. Punishments available are restricted to caution, restriction from participation in sport or leisure activities, additional duties, exclusion from, or confinement to, a place, or an extension of the period of detention. The allowable duration of each of these punishments is limited and other restrictive measures are made. For example, exclusion from, or confinement to, a place, shall not exceed three hours, or for a detainee of or over the age of 16 years, not exceeding 12 hours. The detainee shall at all times be visible to, and able to communicate readily with, an officer. Certain punishments are also expressly prohibited including striking, cuffing, shaking, or other forms of physical violence, or deprivation of food or drink.

414. In the Northern Territory, the Juvenile Justice Act 1983 restricts the punishment of a juvenile in detention to the use of such force as is reasonably necessary in the circumstances in order to maintain discipline in the detention centre. The Act specifically prohibits discipline by: striking, shaking or other forms of physical violence; enforced dosing with a medicine, drug or other substance; compulsion to remain in a constrained or fatiguing position; handcuffing or use of similar devices to restrain normal movement; isolation from other detainees except if desirable for the protection of other detainees and only then by order of the superintendent of the centre and only for a period of less than 12 hours.

415. In Victoria, the Children and Young Persons Act 1989 seeks to prohibit in remand centres and youth residential centre the kind of conduct prohibited by this Article. Corporal punishment, psychological pressure, physical or emotional abuse are prohibited. Reasonable force is only to be used on young people in the centres in cases of clear necessity.

416. In South Australia punishment of a child is normally by deprivation of privileges. No child may be deprived of food or clothing as a punishment and no child may

receive corporal punishment. Children may be kept in detention rooms for limited periods.

417. Children who are detained in detention centres in Western Australia are protected from torture or other cruel inhuman or degrading treatment or punishment. The Child Welfare (Detention Centres) Regulations regulate the punishments which may be imposed on detainees. Punishments for misbehaviour include:

- isolation of the detainee in a cell where such isolation is necessary to protect the detainee, another detainee or property;
- additional domestic duties or other duties;
- the withdrawal of privileges; or
- a fine.

418. The isolation of a detainee is subject to strict rules relating to supervision and the period for which a person can be maintained. A detainee cannot be isolated for more than 24 hours without the approval of the Chief Executive Officer, and cannot be kept in isolation for more than 72 hours except by order of a Judge or Magistrate.

419. Certain types of conduct are prohibited in the discipline or control of the behaviour of detainees in a detention centre:

- the administration of corporal punishment;
- physical contact involving undue pressure; and
- exertion of undue psychological pressure.

420. Reasonable physical force is, however, permitted to physically restrain a detainee for the protection of that detainee or other detainees or persons.

421. Physical contact may be used for the proper care, supervision, training, discipline and development of a detainee provided that such physical contact does not exceed that which would be consistent with the actions of a good parent, having regard to all the surrounding circumstances.

422. Searches of detainees are also regulated. Detainees are not to be strip searched in the sight or presence of a person of the opposite sex, and unless impracticable, in the presence of another detainee. Searches must be conducted with regard to decency and self-respect.

Police officers

423. Police officers in each jurisdiction are not only bound by the rules of common law, but their obligations and duties as police officers are further elaborated in the relevant code of conduct applicable to them. Officers are instructed to treat those in detention with respect for their human dignity. Police training details the circumstances in which force may be used and emphasises that force is only to be applied where necessary and to the minimum extent necessary. Officer training includes training in conflict management to enable a solution to be found without requiring physical restraint. The situations where force may be used include actions in self-defence, for the prevention of injury to the detained person or other persons, in making an arrest and for preventing escape from detention.

424. In relation to police officers and Aboriginal people the Royal Commission into Aboriginal Deaths in Custody made a number of recommendations including the recommendation that greater emphasis should be placed on the involvement of Aboriginal communities, organisations and groups in devising appropriate procedures for the sensitive policing of public and private locations where it is known that substantial numbers of Aboriginal people gather or live. Many of these recommendations have been implemented by the Federal, State and Territory Governments.

Medical or scientific experimentation

425. The trying out of new or unproved methods on human subjects without their consent is not lawful in Australia. However, it is accepted in Australia that there is an essential role for human experimentation in the improvement of human health. Ultimately all new interventions aimed at the cure of ill-health or the maintenance of good health must be tried on humans before they can be accepted for general usage. However, it is also recognised that the human subjects of such experimentation must freely consent to participation without coercion or inducement and in the full knowledge of what is involved.

426. Except in an emergency, the consent of the patient, or in the case of a child, those in law qualified to give such consent, is a necessary prerequisite for the giving of any treatment or the performance of any operation on the patient by a medical practitioner. This prerequisite applies to all patients, whether mentally ill or not, and whether in custody or not. For further discussion on the question of qualification for consent see Part B (b), Definition of the child in laws and regulations, Medical treatment.

427. Australia supports the Helsinki Declaration, adopted by the 18th World Medical Assembly, Helsinki, 1964, revised by the 19th World Medical Assembly, Tokyo, 1975, and also the International Guidelines for Biomedical Research Involving Human Subjects published by the Council for International Organisations of Medical Sciences in collaboration with the World Health Organisation in 1982. The National Health and Medical Research Council has issued, and regularly updates, guidelines in the form of a statement on human experimentation and associated supplementary notes. Briefly stated, these guidelines call for human experimentation to involve only those subjects who have freely consented to participate in the full knowledge of what is involved and knowing that their individual rights and welfare are fully protected.

428. The statement also requires researchers involved in human experimentation to be fully competent in, and aware of, all areas of their research field and further requires them to follow research protocols which are approved by the relevant institutional ethics committees. This statement does not have the force of law, rather it is intended primarily as a guide on ethical matters bearing on human experimentation for research workers and administrators of institutions in which research on humans is undertaken in Australia. However, the knowledge that funding can and will be withdrawn from researchers failing to adhere to the guidelines provides a very powerful and effective regulatory mechanism.

429. Under Australia's Federal system of Government, responsibility for legislating in this area rests with State Governments. Three States, Victoria, South Australia and Western Australia, have introduced specific legislation governing reproductive technologies and embryo experimentation. In all three States the legislation prohibits research that might be detrimental to the embryo. In addition, embryo experimentation is addressed in the ethical guidelines issued by the National Health and Medical Research Council. The guidelines are currently under review.

Collecting identifying material from children

430. The Victorian Crimes Act 1958 provides in section 461L(1) that a child under the age of 10 years who is suspected of committing an offence must not be requested to give his or her finger-prints, and must not have his or her finger-prints taken. However, subsection (2) of that section provides that a member of the police force may take, or cause to be taken by an authorised person, the finger-prints of a child aged between 10 and 15 years where that child is believed on reasonable grounds to have committed an indictable or a summary offence. Where consent to the taking of finger-prints is refused by a child and a parent or guardian of the child, the Children's Court may, on application by a member of the police force, make an order directing a

child between the age of 10 and 15 years to give his or her finger-prints. Under the Victorian legislation, a child in respect of whom an application for a finger-printing order has been made may not call or cross-examine any witnesses (section 461L(7)(b)). (For the purposes of Victorian finger-printing provisions, children aged 15 years and above receive treatment equal to that of adults.)

431. In considering whether the making of the order is justified, the court must take into account the following factors:

- the seriousness of the circumstances surrounding the offence;
- the alleged degree of participation by the child in the commission of the offence; and
- the age of the child.

432. A similar provision exists in the New South Wales Crimes Act 1900, which provides for the photographing and finger-printing of a child under 14 years who is in lawful custody for any offence punishable on indictment or summary conviction. A member of the police force of or above the rank of sergeant may apply to the Children's Court or where it is not possible to apply to the Children's Court within 72 hours after the taking of the child into custody, a Justice, for an order authorising the taking of the child's photograph, finger-prints or palm-prints (section 353AA). A child may not be held in custody for the sole purpose of an application being made. (For the purposes of New South Wales finger-printing provisions, children aged 15 years and above receive treatment equal to that of adults.)

433. In the Australian Capital Territory a police officer shall not take, or cause to be taken, identifying material of a child unless a magistrate has approved the taking of the identifying material. The Children's Services Act 1986 provides that application may be made by a police officer to a magistrate for approval to take the identifying material of a child who is in lawful custody in respect of an offence or of a child against whom proceedings have been instituted by summons in respect of an offence.

434. The Commonwealth Crimes Amendment (Forensic Procedures) Bill, introduced into Federal Parliament in June this year, provides for procedure at the hearing of an application for an order. Under sub-section (5) of section 23WX of that bill, a suspect may be represented by a legal practitioner. Sub-section (6) of that section provides that the subject or his or her representative may call or cross-examine any witness, and may address the magistrate. This provision is based on the Model Forensic Procedures Bill developed by the Commonwealth Model Code Officers Committee. The bill will provide the basis for the Commonwealth Criminal Code expected to be in force by the year 2001, and will ensure that children charged with an indictable or

summary offence have the right to adequately contest an application to a court or magistrate for an order authorising the taking of the child's photograph, finger-prints or palm-prints.

Blood and other forensic samples

435. For many years it has been the practice of police in all jurisdictions to take blood and other forensic samples from suspects as part of the investigation of criminal offences. This practice was based on vague legislation which contained few if any safeguards. Recently, jurisdictions have co-operatively developed through the Model Criminal Code Officers Committee (see above) new legislation designed to safeguard against cruel, inhuman or degrading treatment of suspects in these circumstances. The powers under the legislation are clearly defined and many additional safeguards specifically directed to children have been built in such as the requirement for court approval in all cases. The legislation specifically prevents carrying out any procedures in a cruel, inhuman or degrading manner. The Federal Government is planning to introduce legislation based on the model Bill and it is expected that other jurisdictions will introduce similar legislation thereafter. The Bill provides for compulsory procedures and, where necessary, the use of reasonable force but these procedures are only authorised where there is a court order and proper medical standards are adhered to.

436. Similar comprehensive legislation already exists in Victoria, under the Crimes Act 1958 (as amended in 1989 and 1991).

437. These provisions do not breach Australia's international obligations for a number of reasons. Although the legislation establishes a compulsory procedure, it is not for the purposes of 'medical or scientific experimentation' but to obtain reliable evidence which can be used to assist in the prosecution of serious offences or to exonerate suspects. Secondly, the procedures do not constitute 'torture or...cruel, inhuman or degrading treatment or punishment' as samples must be taken a manner consistent with appropriate medical standards and in circumstances affording reasonable privacy to the person from whom the sample is taken. Indeed, as mentioned above, the provisions work toward implementing the objectives of the Convention by requiring more accountability and scrutiny of decisions made by police.

438. Recently, the New South Wales Court of Criminal Appeal held that the 'bare bones' power to examine arrested suspects did not extend to the taking of blood samples. On 1 June 1995 the New South Wales Attorney-General announced in his second reading speech introducing an amendment which would extend the existing

law to enable the taking of blood samples, that the amendment was an interim measure pending agreement on the Model Bill by the Standing Committee of Attorney's General Criminal Code Officers Committee. The New South Wales Attorney-General undertook to implement more comprehensive provisions later. The new laws are therefore not of the standard that is likely to be seen as a longer term solution.

E. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

(a) Parental guidance (Article 5)

Article 5

> ***States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.***

439. In Australia, the family is a fundamental social unit and its importance is given implicit and explicit recognition. The major pieces of Federal legislation dealing with the family are the Marriage Act 1961, the Family Law Act 1975 and various pieces of social welfare and human services legislation. The protection of families is, of course, also a matter within the concern of State and Territory Governments, in particular in regard to activities by those Governments in the area of community welfare.

440. It is generally agreed that it is only when the family breaks down that there should be intervention by the State and then only if it can be clearly demonstrated that the family has failed to reach certain standards of child care. In view of this, Federal legislation and legislation in all States and Territories defines the role of the parent as being the person who has the major responsibility for the upbringing of the child.

441. In order to minimise need for intervention by the State, the Federal Government in May 1995 announced increased funding of $12.3 million to provide assistance or support for families to deal with problems in family relationships, with violence and with support for children including adolescents.

442. The funding will be used to extend existing marriage and relationship education services. In particular, a community development officer will be placed in six of the highest need areas to assist people from non-English speaking backgrounds to make the best use of the relationship support services available for families. Family service programs will also be extended to regional and rural areas. Health and welfare measures are described under Part F, Basic health and welfare, below.

State and Territory matters

Australian Capital Territory

443. In the Australian Capital Territory, the Children's Services Act 1986 supports the need to preserve the relationship between the child and his or her parents and the desirability of leaving the child in the home, as far as possible. The Act requires the Director of Family Services to provide assistance to parents and children for the purpose of promoting the physical, mental, moral, spiritual and social development of children in a normal and healthy manner. The guidelines contained in the Principles of Service of Family Services enhance the intent of the legislation.

New South Wales

444. In New South Wales the Children (Care and Protection) Act 1987, administered by the Department of Community Services, provides a legislative framework for action and service provision in the field of child protection and alternative care.

445. The objects of this Act are to ensure that children in need of care are provided with assistance and supportive services, the provision of that assistance and those services being based on the premises that:

- children, for the full, harmonious development of their personalities, need love and understanding and, towards that end, should, wherever possible, grow up in the care and under the responsibility of their parents, but if that is not possible, in an environment of affection and moral security and, in the case of children of tender years, should not, except in exceptional circumstances, be separated from their parents;
- continuing contact between children and their parents should be encouraged in situations where, pursuant to legal proceedings, children have been separated from their parents;
- responsibility for the welfare of children belongs primarily to their parents but if not fulfilled, devolves upon the community; and
- except in exceptional circumstances or pursuant to legal proceedings, there should be no interruption of relationships between children and their parents contrary to the wishes of the children and their parents.

Northern Territory

446. The Northern Territory Community Welfare Act 1983 provides that the Family Matters Court should consider the responsibilities, rights and duties of parents when making decisions affecting children. In particular, in relation to Aboriginal children, the Act states that every effort must be made to arrange appropriate custody within the child's extended family. If that is not possible, effort must be made to arrange custody of the child with a person who has the correct relationship with the child according to

Aboriginal customary law. If placement outside these structures must be made, then the court must take into consideration the views of the child's parents or other people who have the responsibility of the child in accordance with Aboriginal customary law.

Queensland

447. In Queensland it is a principle of the Department of Family Services and Aboriginal and Islander Affairs that the family, as the fundamental unit of society, should be given the greatest possible protection and assistance. Parents should be strengthened and supported wherever possible in raising their children. It is the policy of that Department that intervention should only occur when a child is considered to be at significant risk of serious harm.

448. Under the Queensland Government Youth Policy, the Government is committed to developing safe and supportive family and community environments, providing strategies to address discrimination and promoting positive family and community relations. This includes:

- developing policies, programs and services which recognise and respond to the social, cultural, ethnic and structural diversity of young people's families and their social networks;
- ensuring that Government programs and services provide appropriate safeguards to allow young people and their families to redress any related grievances or inequities and have them resolved; and
- supporting family education and human relationship programs and services, including family mediation and counselling support.

South Australia

449. In South Australia the Department of Family and Community Services is committed to the principle that the family is the best place to raise children whilst they remain safe. The Department maintains that the duties of parents are to protect the children's health and well being, assist children to develop their physical, emotional and intellectual capacities, nourish their self-esteem and self-confidence, prepare them to take advantage of and to responsibly exercise their rights and responsibilities as citizens, and as far as possible, provide them with conditions favourable to grasping educational, occupational and other opportunities available to them in society. This policy is reflected in both the Children's Protection Act 1993, the Community Welfare Act 1993 and the Young Offenders Act 1993.

Tasmania

450. In Tasmania it is the policy and practice of the Department of Community and Health to support parents in their responsibilities for caring for their children. This is considered to be the optimal way of providing for the best interests of the child.

Victoria

451. In Victoria, the Children and Young Persons Act 1989 and the Intellectually Disabled Person's Services Act 1986 promote parental responsibility and seek to preserve and strengthen parent/child relationships as far as possible. In the case of the former Act, this holds true for both child protection services and the juvenile justice system. The Victorian Government policy on early intervention to assist children with developmental delay also clearly recognises the rights and abilities of parents to determine and provide appropriate support for their children.

452. The Office of Preschool and Child Care aims to support and reinforce parents' rights and capacity to make fully informed choices about forms of care and education for their children, and to reinforce parent participation in the development and monitoring of services used by their children.

Western Australia

453. In Western Australia it is the policy and practice of the Department for Community Development to support parents in their responsibilities for caring for their children. This is considered to be the optimal way of providing for the best interests of the child.

(b) Parental responsibilities (Article 18, paragraphs 1-2)

Article 18

1. ***States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.***

2. ***For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing***

responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Federal matters

International Year of the Family

454. The Federal Government used the International Year of the Family (IYF) to celebrate Australian families by promoting an increased understanding of their contribution to Australian society.

455. To communicate awareness of the International Year of the Family and its issues, a national communications strategy was developed and information and resources provided to individuals and organisations across Australia. Community awareness activities included:

- national celebration activities;
- a national media campaign;
- the production and distribution of IYF community awareness material such as information kits, posters, badges, stickers and the IYF newsletter Focus on Australian Families;
- the production of resource material such as the Family Book outlining Federal programs, services and initiatives for families; and
- the co-ordination of promotional material by community groups, Government and business, including approval of use of the United Nations logo and monitoring of State IYF Secretariat activities.

456. The IYF initiatives culminated in the Australian Government Agenda for Families which provides a clear statement of the Federal Government's commitment to families, and a framework to direct future family policy and services.

457. Policy initiatives under the Agenda for Families were announced in May 1995 as part of the 1995-96 budget. The Agenda includes a new means-tested maternity allowance of $816 to be introduced from 1 February 1996. The allowance will be indexed to the Consumer Price Index and will provide a vital boost to family income when it is most needed, at the birth of a baby. About 85 per cent of women will be eligible for the payment which will be available to women both at home and in paid employment.

Balancing work and family

458. The Federal Government established the Work and Family Unit in the Department of Industrial Relations to oversee implementation of International Labour Organisation Convention 156, Workers with Family Responsibilities, (ILO 156) which Australia ratified in March 1990. The Unit was established, amongst other reasons, to examine a range of measures to assist workers with family responsibilities and directly facilitate the adoption of family friendly employment.

459. A Strategy for implementing ILO 156 across Federal Government Policies and Programs was endorsed by the Government in December 1992 and launched on 11 February 1993. The strategy is a plan of action to give practical effect to the Convention. Its objectives cover the following broad subject areas: discrimination, terms and conditions of employment, labour force access and participation, community services and planning, and vocational education and training.

460. The Work and Family Unit oversees the broad implementation of the strategy as well as implementation of the industrial relations component.

Freedom from discrimination for working parents

461. The Sex Discrimination Act 1984 prohibits employees from being dismissed on the ground of family responsibilities. Family responsibilities is defined as the responsibilities of an employee to care for or support a dependent child of the employee or any other immediate family member who is in need of care and support.

462. Part of the principal object of the Industrial Relations Act 1988 is to help prevent and eliminate discrimination on a range of grounds, one of which is family responsibilities. In performing its functions under the Act, the Australian Industrial Relations Commission is required to take account of the principles set out in the Workers with Family Responsibilities Convention 1981. In particular, the Commission must take account of those principles relating to preventing discrimination and helping workers reconcile their employment and family responsibilities. The Commission is also unable to certify or approve for implementation a workplace agreement if it believes that a provision of the agreement discriminates against an employee on a range of grounds, one of which is family responsibilities.

463. Section 150A of the Industrial Relations Act 1988 requires the Commission to review all Federal awards on a three yearly basis. The Commission is required to identify and take steps to remedy deficiencies including where award provisions do

not provide for secure, relevant and consistent wages and conditions of employment, or are discriminatory, overly prescriptive, obsolete, outdated or not expressed in plain English.

464. Under the Industrial Relations Act 1988, it is also unlawful for an employer to terminate the employment of an employee for a range of discriminatory reasons, including the employee's family responsibilities, unless the reason is related to the inherent requirements of the position. A religious institution is not prevented from dismissing an employee on discriminatory grounds, however, provided that the institution is acting in good faith to protect the susceptibilities of adherents of that religion.

465. A pilot program for establishing a process to review awards is operating and the Human Rights and Equal Opportunity Commission is providing guidance to the parties to assist in the identification of both direct and indirect discrimination, including where awards discriminate on the basis of family responsibilities.

466. Outcomes from the pilot program have been considered by the Australian Industrial Relations Commission in the Third Safety Net Adjustment and Section 150A Review proceedings held in October 1995. Drawing on the experience of the pilot award reviews, the Australian Industrial Relations Commission has developed general guidelines to assist award parties in the section 150A process. The guidelines prepared by the Commission include a best practice guide on eliminating discrimination with particular advice on the prevention and elimination of both direct and indirect discrimination. The guide also includes a model anti-discrimination clause.

467. The Australian Industrial Relations Commission has decided that the third award level arbitrated safety net adjustment will be subject to a number of different tests, including that unless there are special circumstances warranting a different approach, the award is varied to insert the model anti-discrimination clause; and that, where the section 150A review of the award has not been completed, discussions between the award parties are continuing with attention to the removal of discrimination. The Commission has also said that, provided it is satisfied that there is no likelihood of agreement by the parties within a reasonable period, it may determine the matter by arbitration.

Maternity leave, adoption and parental leave

468. The Federal 1990 Parental Leave Test Case established minimum parental leave standards for Federal awards by extending the maternity and adoption leave standards

to the case of paternity leave. The parental leave standards have largely been reflected in either awards under State industrial tribunals or State legislation. The standard provides for 52 weeks unpaid parental leave to enable both the mother and father to share leave to care for a child in the first year following birth or adoption. Employees are eligible after 12 months or more continuous service with an individual employer.

469. The Industrial Relations Act now establishes minimum entitlements for various conditions of employment, including parental leave. The Act provides for unpaid parental leave of up to 52 weeks which can be taken by both men and women workers, on a shared basis, to care for a newborn child. Except for a period of one week following the birth of the child, the leave taken by the mother and her spouse cannot overlap. The Act also provides for an analogous system of adoption leave. The entitlement to parental leave under the Act will be particularly beneficial for non-award employees, and those not covered by State legislation. Such employees have not previously had any general entitlement to parental leave.

470. At this stage, the majority of Australian women employed in the private sector do not have access to paid maternity leave. However, Federal Government employees with 12 months or more continuous service are entitled to a maximum period of paid maternity leave of 12 weeks and a total absence of 52 weeks. Where both parents are Federal Government employees, a total absence of 66 weeks parental leave is available.

Family leave test case

471. The Federal Government provided a mechanism, via the Industrial Relations Reform Act 1993, for consideration of a Family Leave Test Case by the Australian Industrial Relations Commission.

472. On 29 November 1994, the Commission handed down its decision which involved a two-stage approach. In the first stage employees were provided access to their own sick leave entitlements to care for ill family members and employers and employees are able to agree to more flexible access to up to one week's annual leave to be taken in single days, make-up time arrangements and unpaid leave.

473. The second stage, to be implemented following further hearings which occurred in August 1995 considers other mechanisms such as: aggregation of existing award conditions relating to sick leave and compassionate/bereavement leave into an entitlement accessible to employees for looking after a sick family member; increasing flexibility with respect to use of rostered days off and part-time work; and a general entitlement to unpaid family leave.

Reform of the Family Law Act

474. Until 1995, the basic principle under the Family Law Act 1975 was that unless the Family Court orders otherwise, each of the parents was a guardian of the child and the parents had joint custody of a child who had not attained the age of 18 years. The Court had a broad power to make orders for the custody, guardianship or welfare of, or access to, a child having had regard to the welfare of the child as the paramount consideration.

475. The Family Law Reform Act 1995 replaces this part of the Act with a completely new part. The proposed new part is based on the concepts and terminology recommended by the Family Law Council in a letter of advice on the operation of the Children Act 1989 (United Kingdom).

476. The Act replaces the concept of custody and its companion notion of access and also removes the guardianship responsibilities conferred on parents under the previous legislation. The concept of custody especially has carried with it notions of ownership of children. In some cases, it has tended to lead to the belief that the child is a possession of the parent who is granted custody, to do with as that parent pleases including making the child available for access when that person pleases, despite court orders to the contrary.

477. The Act enacts provisions which give parents parental responsibility defined as all the duties, powers, responsibilities and authority which by law parents and guardians have in relation to children. Parents are no longer be the statutory guardians of the child but have parental responsibility conferred upon them. It is important to note that the concept of parental responsibility does not expressly confer any rights on the parents in respect of the child. There is, for example, no longer a right of custody or a right of access. Rather parents have a responsibility to discharge the obligation of parental responsibility in the best interests of the child. The Act also makes it clear that parental responsibility is not dependent on whether the parents are married or separated or whether they have never married or lived together.

478. The Act inserts an objects clause into the Family Law Act 1975 which provides that children should receive adequate and proper parenting to help them achieve their full potential. The Act makes it clear that this object is based on the following principles:

- children have the right to know and be cared for by both parents;
- children have the right of contact, on a regular basis, with both parents and any other person significant to the care, welfare and development of the child;

- parents share the duties and responsibilities concerning the care, welfare and development of the child; and
- parents should agree about the future parenting of the child.

Parenting Plans

479. The 1995 Act inserts a new Division in the Family Law Act 1945 to deal with parenting plans. The purpose of this Division is to encourage parents to agree about matters relating to children rather than have these matters judicially determined. Parents are directed, in reaching their agreement, to regard the best interests of the child as the paramount consideration. When coupled with the provisions dealing with primary dispute resolution, the signals given to parties by the 1995 Act is that an outcome should be arrived at by them with the assistance of a counsellor or through mediation.

480. A parenting plan can be registered in the court and if this is done the plan has effect as if it were an order of the court. Registration engages provisions in the Family Law Act 1975 setting out the obligations of the parties, notably in relation to residence and contact. Registration also signals that the provisions dealing with enforcement and sanctions are available. The requirements of a parenting plan are simply that it be:

- in writing; and
- made between the parents.

481. In general, the Family Law Act 1975 now states that a parenting plan may deal with:

- residence of the child;
- contact between the child and any other person significant to the child;
- maintenance of the child; and
- any other aspect of parental responsibility.

482. Other aspects of parental responsibility that may typically be covered by a parenting plan are:

- education for the child;
- religious observance;
- naming for the child;
- contact with the extended family;
- health and medical matters in relation to the child;

- sharing of information between the parties and contact between the parties in relation to matters concerning the child; and
- death of a parent.

483. A court has the power to vary the provisions of a parenting plan if it considers that a variation is in the best interests of the child as well as the power not to enforce any provision of a plan if it considers that it is not in the best interests of the child. Because residence of the child is an important incident of parental responsibility, the 1995 Act makes provision to negate a parenting agreement if it purports to determine that a child is to live with a person who is not a parent of the child.

Parenting orders

484. A significant departure in the reforms from the earlier legislation is the type of orders the Court may make. A general order for the care, welfare or development of the child is now known as a parenting order, so called to emphasise it as an order dealing with the parenting of the child. It will have a number of components:

- residence: stating who is to provide residence for the child;
- contact: stating who may have contact with the child;
- maintenance: stating the amount and who is to pay maintenance for the child; and
- special purpose: stating any other matter that the court may include in the order.

485. A parenting order may be applied for by either or both the parents, the child or any other person concerned with the care, welfare or development of the child. The Court has a general power to make an order regarding the best interests of the child as the paramount consideration. A parenting order ceases to be in force when a child turns 18, marries or enters a de facto relationship.

486. Because residence is a very important incident of parental responsibility, before an order regarding residence with a person other than a parent can be made, the parties must have attended, unless special circumstances exist, a conference with a counsellor and the court must have considered a report by the counsellor.

487. There are general obligations created by residence and contact orders. A person must not remove a child from the care of the person in whose favour the residence order was made, refuse or fail to deliver a child to that person, nor interfere with any of the powers, duties or responsibilities that the person has under the parenting order. Equally, a person must not hinder or prevent any authorised contact a child is supposed to have under the parenting order. A person may be arrested if he or she

contravenes the general obligations and the person must be brought before a court. The general obligations under parenting orders relating to the taking or sending of children from Australia have been re-enacted.

Maintenance of children

488. Further information on maintenance is provided in Part E (e), Family Environment and Alternative Care, Recovery of maintenance for the child, below.

Other financial support

489. The financial interests of children prior to reaching their age of majority (at 18 years) are able to be protected by the exercise of power by the courts and through the activities of the Public Trust Offices which exist in the various Australian jurisdictions. Moreover, if parents die intestate, or have failed to make adequate testamentary arrangements for their children, provisions exist to enable such children to claim their deceased parent's estate.

Family support measures

490. In May 1995 the Federal Government launched the Justice Statement which makes a strong commitment to the importance of families in Australian society. At present over $21 million is committed to more than 60 community-based family support organisations every year. Around 150,000 clients are assisted annually through marriage/relationship counselling and education, skills training for family relationships and mediation within families facing difficulties, particularly to assist with adolescent crises. The new or expanded initiatives announced in the statement included the following:

- a national handover pilot program, Handover and Visiting Centres, for safe transfer of children between separated parents where there is a background of conflict or the risk of abduction, violence or other abuse;
- increased family mediation and Family Court counselling services;
- family skills training programs for parents using these Centres;
- funding for specialist workers in children's and youth law to assist community legal centres to meet the demand for advice and advocacy for children and young people; and
- increased funding for marriage and relationship preparation and measures to extend access to a range of family support services, particularly for people in regional and rural areas and for people of non-English speaking backgrounds.

State and Territory matters

Australian Capital Territory

491. The Australian Capital Territory Family Services' child care and protection policy states that parents have the primary responsibility to protect and meet the developmental needs of their own children. Family Services role is to provide such assistance, guidance and, where necessary, intervention to ensure that parents can fulfil their duties and responsibilities. Where such duty is not performed or is impaired, Family Services has the role of delivering services that protect children from all forms of abuse, neglect and exploitation.

New South Wales

Parental support

492. The provisions of Article 18 are implemented by the New South Wales Department of Community Services. In addition to administering the child protection provisions of the Children (Care and Protection) Act 1987 (see Part E (i), Family environment and alternative care, Abuse and neglect, below), the Department of Community Services provides support services for parents and legal guardians in the performance of their child-rearing responsibilities and administers a funding and licensing scheme for child care services in New South Wales. The Department has initiated Family Week as an affirmation of the importance of families.

493. The Department is taking some experimental measures under the Children (Parental Responsibilities) Act 1994 to ensure that parents accept their responsibilities for children out on the streets. These experimental measures involve the piloting of parts of the legislation in the Orange and Gosford districts. The pilots are intended to continue until independent evaluation of the model is undertaken. This evaluation was prescribed by the legislation to occur 12 months after the introduction of the legislation in December 1994.

Family Work Program

494. The Family Work Program of the New South Wales Department of Community Services is directed to supporting parents in their role as caregivers, ensuring the safety and protection of their children and providing appropriate advice and guidance to their children. Through the Family Work Program, the Department provides direct services to assist families with identified problems which constitute a threat to their viability or a potential risk to children. The range of services provided includes

assessment, counselling, mediation, financial assistance and referral to other suitable agencies. The Department also arranges voluntary foster care for children in situations where the family is temporarily unable to care for them.

Northern Territory

495. The Community Welfare Act 1983 indirectly enforces the role of the parent or guardian as being the person who has the major responsibility for the upbringing of the child. Where such a duty is not performed or is impaired, the State has the responsibility to advocate for the child and ensure he or she receives adequate care and protection.

Victoria

Parental Responsibilities

496. The Victorian Government Family Support Program acknowledges that parents or legal guardians are the principal caregivers to children and have the primary responsibility for their upbringing in accordance with the best interest of the child. Two principles underpin the redevelopment of early parenting and family support services in Victoria. These are:

- the influence of the family is of such significance that a child's optimum health and development is dependent on the nurturing environment of the family; and
- families have the primary responsibility to nurture and care for children and other family members in a loving, secure and non-violent environment. Family refers to any configuration of people who have care of a child or children and includes single parents of either sex, couples, foster parents, grandparents and guardians.

Queensland

497. The Queensland Children's Services Act 1965 views parents as having common and equal responsibilities in relation to the upbringing and development of the child. Part V of the Children's Services Act 1965 relates to the giving of assistance to children in need. The Act also gives the Director of the Department of Family Services and Aboriginal and Islander Affairs the power to use his or her discretion in providing assistance to a child or family deemed to be in need. When such assistance involves the expenditure of money, the power conferred upon the Director is subject to appropriation by Parliament of moneys for the purpose.

498. It is the policy of the Department of Family Services and Aboriginal and Islander Affairs, wherever possible, to provide assistance, sometimes by way of referral, to families and children in contact with the Department. In the giving of assistance, the

principles of the best interests of the child and where applicable, respect for the views of the child are adhered to. The Department of Education is encouraging the involvement of parents in the development of school programs as well as in decision making within the schools. Schools are encouraged to set up representative school councils so parents may have meaningful input to the school.

South Australia and Tasmania

499. In South Australia and Tasmania the policy of the Department of Family and Community Services and the Department of Community and Health respectively ensure that children receive adequate parental care and are protected against maltreatment. These Departments have a responsibility to promote a network of services which assist parents to carry out their responsibilities.

Western Australia

500. In Western Australia the Department of Community Development, under the provisions of the Community Services Act 1972, provides a range of parent and family services. These include Family Support Services which fund over 70 agencies to provide parenting support to disadvantaged families (for example, outreach, self help groups, playgroups and counselling), a Parent Help Centre, the Family Court Counselling Service, and other services such as intervention for domestic violence and parent adolescent conflict.

(c) Separation from parents (Article 9)

Article 9

1. ***States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.***

2. ***In any proceedings pursuant to paragraph 1 of the present Article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.***

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Federal matters

501. Part E (b), Family environment and alternative care, Parental responsibilities, above addresses separation from parents where parents are living separately.

502. The Aboriginal child placement principle and the fourth term of reference of the inquiry by the Human Rights and Equal Opportunity Commission into the past compulsory separation of Aboriginal and Torres Strait Islander children from their families is referred to at Part E (f), Children deprived of a family environment, below.

503. Many women are in situations where court-ordered access arrangements require them to meet or deal with a former partner who behaves violently. Orders allowing a father to collect his children from the family home may create difficulties where the mother has legal protection from apprehended violence by the father. Confronted with this problem, the Family Court sometimes has provided for the handover of children at a police station. The Federal Government recognises that such arrangements are far from desirable for parents or children. Even where compliance with violence protection orders is not an issue, recently separated parents sometimes experience conflict and difficulty in arranging access visits.

504. Accordingly, the Government announced in May 1995 that it will establish a national pilot program of facilitated handover and visiting centres in each State and Territory, for safe transfer of children between separated parents where there is a background of conflict in the parental relationship. The Government also will provide funding for family skills training for parents using the handover and visiting centres.

505. The handover and visiting centres will be of benefit to both women and men who need assistance with arrangements for child access in order to avoid conflict and tension. While use of these centres will often help to defuse potentially violent situations arising over shared parenting arrangements, the Federal Government is also amending the Family Law Act to ensure that violence is taken into account properly when parenting arrangements are considered by the Family Court. See further Part E(b), Family environment and alternative care, Parental responsibilities above.

State and Territory matters

Australian Capital Territory

506. In the Australian Capital Territory the factors taken into account when children are placed outside the family situation are outlined in the Children's Services Act 1986. They include:

- the need to strengthen and preserve the relationship between the child and his or her parents and other members of his or her family;
- the desirability of leaving the child in his or her own home; and
- the desirability of allowing the education, training or lawful employment of the child to be continued without interruption or disturbance.

507. The primary aim in placing children outside their own families is a supportive and rehabilitative approach with the ultimate focus on restoration of the child to the family, wherever possible. Where such action has been taken by virtue of the Act which results in the child being separated from the home and placed in a shelter or an approved home the Act outlines several checks and procedures which, if not satisfied, will result in the automatic restoration of the child to the parents on release. The Act provides that the Community Advocate should review the circumstances of children in care on an annual basis and report to the court.

508. The Children's Services Act 1986 specifies that when a person authorised under section 70 of the Act takes a child into care, all reasonable steps must be taken as soon as possible to notify the parent, whether resident in the Territory or not, of the action taken and the whereabouts of the child.

509. The Family Services Branch policy on substitute care provides that children who are in such care will be given the right and the opportunity to maintain contact with and have information about parents, siblings, extended family, friends and previous caregivers.

510. Where children are sentenced to a period of imprisonment in the Australian Capital Territory, their parents are sent a letter notifying them of the fact that their child is in custody and of visiting hours.

511. At any time after a child has been taken into custody, a parent of a child, or a person having custody of the child may apply to a magistrate to have the child released (Children's Services Act s75(2A)). The Community Advocate may also direct that a child be released (Children's Services Act s75(1)). If the child, his or her parents, or a person having custody of the child applies to a magistrate to be heard, a magistrate may not proceed by way of any custody order, until he or she has heard the parent, child or person, whether by way of a formal hearing or otherwise (Children's Services Act s75(5)).

New South Wales

512. The Children (Care and Protection) Act 1987 provides for the separation of children from their parents where abuse or neglect may be involved. All such action is subject to judicial review under the Act. The Act provides that the welfare and interests of children are to be given paramount consideration, and general principles to be considered. Provision is made under the Act for the child, a parent or person responsible for the child or other interested parties to appear and be represented before the children's court in such cases.

513. The New South Wales Department of Community Services has a statutory responsibility to investigate notifications of child abuse and neglect and to take appropriate action aimed at protecting the child. The Department's primary role is to provide assessment, case co-ordination, monitoring and referral. The Department's child protection intervention is focussed on the child as the primary client but also considers the importance of a family to a child's well-being. Services are directed at maintaining family bonds and relationships whenever possible and in the best interests of the child.

514. In the majority of child protection cases, children remain with their parents after risk factors to the child's safety have been addressed. Community support services are utilised to assist the family and to promote the child's recovering from abuse and neglect.

515. In a minority of cases it is necessary to initiate legal proceedings in order to protect children from abuse or neglect. In these cases the Children (Care and Protection) Act 1987 requires that the court must be satisfied that any order made in

respect of a child will result in a significant improvement in the standard of care being given to the child and further that the court must consider:

- the need to protect the welfare of the child;
- the views of the child;
- the importance of encouraging continuing contact between the child and persons responsible for the child; and
- the importance of preserving the particular cultural environment of the child.

516. There are some avenues of appeal available to a parent and/or child against decisions whilst in care. For example reviews pursuant to section 75 of the Act, appeals to the Community Services Appeals Tribunal, complaints to the Community Services Commission and the role played by the Official Visitors.

517. Under the Children (Criminal Proceedings) Act 1987, a Children's Court may, if it has found a child guilty of an indictable offence, subject to the provisions of the Sentencing Act 1989, make an order committing that person for such period of time (not exceeding two years) as it thinks fit, to the control of the Minister administering the Children (Detention Centres) Act 1987.

518. Under the Children (Criminal Proceedings) Act 1987, a court, in exercising criminal jurisdiction with respect to children, shall have regard to the principle that children have a right to be heard and a right to participate in the processes that lead to decisions that affect them. In addition, persons directly interested in the proceedings may be given the opportunity to make their views known.

519. Detention centres in New South Wales, like those in the Australian Capital Territory notify parents by mail of the fact that their child is in custody and of visiting hours. The Juvenile Justice Policy and Procedural Manual further states that 'on arrival at a detention centre, a detainee will be assisted to make a telephone call to his family to inform them of his or her whereabouts and visiting arrangements etc at the detention centre.'

Northern Territory

520. The Community Welfare Act 1983 outlines the circumstances where a child can be separated from its parents and the factors to be considered when ordering such a separation. There are also Principles of Substitute Care which are taken into account by the Family, Youth and Children's Services Division of the Department of Health and Community Services. The primary approach in moving children outside their own families is a supportive and rehabilitative one with the ultimate focus on restoration of

the child to the family where possible. The Community Welfare Act 1983 provides that special steps are to be taken to place Aboriginal children with members of their extended family in preference to other care.

521. The Community Welfare Act 1983 provides for the procedure to be adopted by an authority which takes a child deemed in need of care into custody. This includes a requirement to notify the Minister of such actions. The Act provides that the Minister must notify the parents of a child of the child's removal and placement into custodial care and of any proposed subsequent action.

522. The Community Welfare Act 1983 established the Family Matters Court to hear matters in relation to the taking into custody of children. Parents or guardians of the child are deemed to be parties to the proceedings, and there is provision in the Act requiring parents or guardians to attend the hearing and warrants to issue if they refuse to do so. If their attendance is not possible in the circumstances, there are procedures in place to ensure the parents are informed of the proceedings.

Queensland

523. It is the policy of the Queensland Department of Family Services and Aboriginal and Islander Affairs that, wherever possible, children should be cared for by their immediate family or a family member. Only where this cannot be achieved or is not thought to be in the best interests of the child, should the child be placed outside its family. Under the Children's Services Act 1965 a child is deemed to be in need of care and protection should they be abused or neglected upon application to the court for the entry of a child into the Care and Protection of the Director-General.

524. Pre-hearing conferences have recently been introduced into larger Children's Courts. These conferences provide a forum for mediation of disputes between parents and departmental officers responsible for applications for Care and Protection. During such conferences, parents may themselves, or through their solicitors, present evidence of change of circumstances, request changes to case plans, dispute comments made in affidavits and suggest alternatives to a statutory order.

525. The role of the mediator in these conferences is to encourage the exchange of information and facilitate negotiation between the parties in the best interests of the child. If satisfactory compromise cannot be reached then the Children's Court will determine the outcome of the custody and guardianship of the child.

South Australia

526. Central to the policies of the South Australian Department of Family and Community Services on families is the recognition that the family is the best means of providing care, socialisation and continuity of relationships for the child. Birth families are acknowledged as having the first responsibility to provide care for children, and families have the right to choose the kind of care they will give their children as long as the child's well being is maintained.

527. Where parental responsibility is not carried out, or when parental care is considered to be lacking and may be harmful to the child, the Department has an obligation to take appropriate action to protect the child. Any decision to intervene in a relationship between a parent and child is made as part of the judicial process. Any intervention undertaken on behalf of children must be child focussed with the care and protection of the child being the paramount consideration.

528. The objects of the Children's Protection Act 1993 are contained in section 3 of the Act which provides:

- 3(1) The object of this Act is to provide for the care and protection of children and to do so in a manner that maximises a child's opportunity to grow up in a safe and stable environment and to reach his or her full potential; and
- (2) The administration of this Act is to be founded on the principles that the primary responsibility for a child's care and protection lies with the child's family and that a high priority should therefore be accorded to supporting and assisting the family to carry out that responsibility.

529. The principles to be observed in dealing with children are contained in section 4 of the Act which provides:

- 4(1) In any exercise of powers under this Act in relation to a child -
    - (a) the safety of the child is to be the paramount consideration; and
    - (b) the powers must always be exercised in the best interests of the child.
- (2) Serious consideration must, however, be given to the desirability of -
    - (a) keeping the child within his or her family; and
    - (b) preserving and strengthening family relationships between the child, the child's parents and other members of the child's family, whether or not the child is to reside within his or her family; and
    - (c) not withdrawing the child unnecessarily from the child's familiar environment or neighbourhood; and
    - (d) not interrupting unnecessarily the child's education or employment; and

- (e) preserving and enhancing the child's sense of racial, ethnic, religious or cultural identity, and making decisions and orders that are consistent with racial or ethnic traditions or religious or cultural values.

- (3) If the child is able to form and express his or her own views as to his or her ongoing care and protection, those views must be sought and given serious consideration, taking into account the child's age and maturity.

- (4) All proceedings under this Act must be dealt with expeditiously, with due regard to the degree of urgency of each particular case.

530. Under the Children's Protection Act 1993 the Department has a duty to investigate notifications of child abuse and neglect. If the Department's Minister is of the opinion that a child is at risk and that arrangements should be made to secure the child's care and protection, he or she must cause a family care meeting to be convened in respect of the child. The child's family are invited to attend the meetings, the purpose of which is provide a proper opportunity for the child's family, in conjunction with a Care and Protection Co-ordinator to make informed decisions as to the arrangements for best securing the care and protection of the child.

531. A child may be in need of care and protection because:

- a guardian or a person residing with the child has maltreated or neglected the child to the extent that the child has suffered or is likely to suffer physical or emotional injury, or to the extent that the child's physical, mental or emotional development is in jeopardy;
- the guardians of the child are unable or unwilling to exercise adequate supervision and control over the child;
- the guardians of the child are unable or unwilling to maintain the child; or
- the guardians of the child are dead, have abandoned the child, or cannot after reasonable inquiries be found.

532. In any of the above circumstances, the Minister may apply to the Children's Court for a declaration that the child is in need of care and protection.

533. Should a child be separated from its parents by an action initiated by the State, the Department provides the parents or other appropriate persons with essential information concerning the child's circumstances and whereabouts, unless the provision of such information would be detrimental to the child's safety and well being.

Victoria

534. In Victoria, the Children and Young Persons Act 1989 establishes clear legal processes for State intervention which may result in the separation of children from

their parents. Appeal rights exist for children and their parents against State intervention. The Adoption Act 1984 also contains several safeguards concerning the separation of children from their parents.

535. While there are no specific provisions in the Intellectually Disabled Person's Services Act 1986, the policy of the Department of Health and Community Services gives emphasis to maintaining parental involvement when children live apart from their parents. The decision for a child to live separately from parents, except in those cases where there are child protection concerns, rests predominantly with the parents and the proposed caregiver.

536. The Office of Corrections offers a number of programs which enable children separated from a parent by imprisonment to maintain regular and direct contact with the parent. Regulations dealing with visits of children to parents in prison are made under the Corrections Act 1986. The importance of allowing prisoners to maintain contact with their children is acknowledged, and visits of prisoners' children are not generally affected by any disciplinary penalties that may be imposed for breaches of prison regulations. Prisoners' children may be permitted to visit even where no other contact visits are allowed.

Western Australia

537. The Western Australian Department for Community Development has the responsibility under the Child Welfare Act 1947 for the protection of children from all forms of maltreatment. This Act prescribes departmental practice in intervening with families to protect children and requires that application be made to the Children's Court of Western Australia when intervention against the wishes of parents is considered necessary.

538. All parties, including the child, are able to participate in legal proceedings. The Department reserves involuntary intervention as a means of last resort. Its Child Protection Policy reflects this stance. The following excerpts are indicative:

- The family has prime responsibility for the care and protection of children and is the usual focus for departmental intervention; and
- Prevention of harm and exploitation is the best form of child protection where appropriate, family support, mediation and treatment services will be provided.

539. If a child is found to be in need of care and protection by the Court, the Department's priority is to work with the family with the aim of returning the child to parental care. If this is not possible the child's relationships with his or her parents and other family members are maintained and developed to the maximum extent

consistent with the child's protection. Proposed new legislation will clearly specify this policy through the inclusion of principles to this effect, more restrictive grounds for intervention and a more flexible range of orders available to the court.

(d) Family reunification (Article 10)

Article 10

1. ***In accordance with the obligation of States Parties under Article 9, paragraph 1, application by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicant and for the members of their families.***

2. ***A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under Article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognised in the present Convention.***

540. The Federal Migration Regulations include provisions for visas and entry permits to facilitate the entry to Australia of:

- a dependent child for the purpose of re-unification with an Australian citizen or permanent resident parent; and
- persons wishing to visit a close family member such as a parent or child who is an Australian citizen or permanent resident.

541. The objective of the first category is to reflect the immigration principle of close family reunion through facilitating the permanent entry of a dependent child of an Australian citizen or permanent resident.

542. In recognition of the importance of reuniting children overseas with their parent or parents in Australia, child visas are afforded priority in processing by Australian missions overseas. Where a minor child is not entering Australia into the care of both

parents, the regulations stipulate that the Minister must be satisfied that the grant of a visa would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, the child.

(e) Recovery of maintenance for the child (Article 27, paragraph 4)

Article 27

4 ***States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements , as well as the making of other appropriate agreements.***

Federal matters

The Family Law Act 1975

543. The Federal Family Law Act 1975 applies in all States and Territories. In Western Australia, however, ex-nuptial children are not covered by the Act, but by compatible State legislation. The object of the provisions in the Family Law Act 1975 relating to the maintenance of children is that children should have their proper needs met from reasonable and adequate shares in the income, earning capacity, property and financial resources of both of their parents and that the parents share equitably in the support of their children. As such the provisions are directed towards ensuring the provision of adequate levels of maintenance for children.

544. Where the Family Court makes an order for maintenance for a child and this order is not complied with, the Family Law Rules provide for its enforcement. Enforcement may be by garnishment, seizure and sale of personal property, sequestration of estate and sale of real property.

545. Child maintenance orders may not have effect if the child is 18 or older unless the child has special needs due to education, training, mental or physical handicap. In the absence of these special needs, any order of the court ceases to be in force once the child turns 18. An order for child maintenance may be applied for by either or both the parents, the child, or any other person who is interested in the care, welfare or development of the child.

546. A step-parent has a duty to maintain a child only if the step-parent is a guardian of the child. This must be conferred by order of a court. Alternatively, the court may order that it is proper for a step-parent to have the duty to maintain the child. The circumstances where such orders are made is rare and the court has declined to make an order where there is no evidence that financial support by the birth father was not available because no efforts had been made to locate the birth father. Also, even where the court finds that it is proper that the step-parent have the duty to maintain the child, if that duty can be fulfilled by the birth parents, the court will not make an order against the step-parent. (Dodge and Krapf, in the marriage of (1991) FLC 78, 442.)

Child Support Scheme

Description of the scheme

547. The Child Support Scheme represents a major initiative by the Federal Government directed towards ensuring, as far as practicable, that children of separated parents continue to receive financial support from both of their parents in accordance with the parents' financial capacities. The principle object of child maintenance is to ensure that children have their needs met by parents and that parents share equitably in the support of their children. Thus, the principle upon which child maintenance is based is that parents have the primary duty to maintain their child. That duty is stated to have priority over all of a parent's commitments, other than those necessary to enable the parent to maintain himself or herself and any other child the person has a duty to maintain. The duty is not of a lower priority than the duty to maintain any other person and is not affected by the duty of another person, such as a step-parent, to maintain the child or indeed the child's entitlement to an income tested pension, allowance or benefit.

548. The Child Support Scheme was introduced in two stages by legislation in 1988 and 1989. The Child Support (Registration and Collection) Act 1988 was enacted to ensure that children receive from their parents the financial support that the parents are liable to provide and that periodic amounts payable by non-custodial parents towards the maintenance of their children are paid on a regular and timely basis. This Act created the Child Support Agency in the Australian Taxation Office whose role is to register, collect and enforce payment of child maintenance as stipulated in a court order or court registered agreement. Once a child maintenance liability is registered with the Agency, it is the Agency and not the payee who is responsible for collection of the monies. The primary means used by the Agency for collecting such monies is automatic deduction from wages or salary. Where this is not possible the payer is liable to make payments directly to the Agency each month.

549. The Child Support (Assessment) Act 1989 provides for assessment of child support liabilities through a formula assessment by the Child Support Agency. This Act applies to children born after 1 October 1989 or who are full brothers and sisters of children born on or after 1 October 1989 or whose parents separated on or after 1 October 1989 (if they lived together). Parents who are unable to make their own private arrangements are more likely to seek a formula based assessment for child support. People who apply for a payment of sole parent pension or additional family payment from the Department of Social Security are, with some exceptions, also required to apply for an assessment.

550. The assessment is made by applying the formula to the non-custodial parent's taxable income after an allowance for self support. Formula assessment also takes into account the custodial parent's taxable income (where there is any) but this is disregarded where earnings are below the yearly equivalent of average weekly earnings plus an additional amount representing child care costs for each child under 12.

551. Where a liability is registered with the Child Support Registrar for collection it becomes a debt due to the Federal Government under the Child Support (Registration and Collection) Act 1988. The custodian is not entitled to, and may not take action to enforce payment of, the outstanding debt. This responsibility rests with the Child Support Registrar. The Child Support Registrar may use the most appropriate or a combination of the following:

- intercepts of amount owing by the Federal Government;
- collection from third parties;
- collection of outstanding debt through salary deductions;
- arrangements for payment; or
- legal action.

552. However, a characteristic of the Child Support Scheme is that a child support liability assessed by the Child Support Agency under the formula does not prevent a custodian from collecting the maintenance payments themselves. By recognising that many people are able to make an arrangement for payment which does not necessitate collection by the Agency, once the level of a liability has been established under the formula, the Scheme ensures that only those cases where collection may be a difficulty will require registration with the Agency for collection. The right of parents to collect child support privately, even where the custodian is receiving social security payments, is one of the hallmark features of the Child Support Scheme.

Evaluation of the Child Support Scheme

553. Since the establishment of the Child Support Scheme there has been a significant improvement in the maintenance of children (Final Report of the Child Support Evaluation Advisory Group, 1992). For example:

- seventy-four per cent of liabilities registered with the Child Support Agency are currently being collected; and
- in 1992-93 the average value of a formula assessment was $46.34 per child per week compared with $42 per child per week for a court assessment. It is estimated that the average value of a court order would have been $31 per child per week without the Scheme.

554. When the Joint Select Committee, appointed in March 1992 to inquire into and report on aspects of the Family Law Act 1975, tabled its Report in November 1992, the Report contained a number of references to the Child Support Scheme. Examination of the Scheme had not been part of the terms of reference for the inquiry but since there was a considerable amount of criticism of aspects of the scheme, particularly the level of payments required which were not perceived as being adjusted to accord with the capacity of the non-custodial parent to pay, further detailed examination of the scheme was considered to be desirable. Accordingly, the Federal Government established the Joint Select Committee on certain Family Law Issues in May 1993. One of its major tasks was to investigate the operation and effectiveness of the Child Support Scheme. The Committee reported in November 1994. In an interim Government response which was tabled in Parliament in 29 March 1995 the Government indicated that certain administrative issues would be dealt with by the Child Support Registrar in order to give effect to some of the report's recommendations. The final Government response is scheduled to be tabled no later than the first half of 1996.

Further improvements

555. The Government continues to monitor and improve the Child Support Scheme. Amendments made in 1992 for example introduced a penalty for underestimating taxable income. Further amendments which are currently expected to come into effect in June 1995 enable social security clients who presently have their child support collected by the Child Support Agency to opt for private collection.

Recovery of maintenance abroad

556. Australia is a party to a number of international agreements designed to ensure the recovery of maintenance from those responsible for its payment.

557. On a bi-lateral basis, Australia is a party to arrangements with some 30 countries which allow overseas maintenance orders and agreements to be registered and enforced in Australia pursuant to these orders Australian orders and agreements can be transmitted for registration and enforcement overseas.

558. Australia has signed the United Nations Convention on the Recovery of Maintenance Abroad (UNCRAM) which entered into force in Australia on 14 March 1985. This treaty allows a claim for maintenance to be transmitted between participating countries. It also allows for an order for the payment of maintenance to be obtained and enforced in the country in which a person liable to pay maintenance currently resides.

559. Regulations under the Family Law Act 1975 operate to give effect to the above mentioned bi-lateral arrangements and to UNCRAM.

560. Australia is taking steps to conclude bi-lateral arrangements with those countries in respect of which none currently exists. It is also participating in work by the Hague Conference on Private International Law in developing a new multilateral Convention on maintenance obligations.

State and Territory matters

Australian Capital Territory

561. Family Services Branch policy and procedure maintain that parents have a responsibility for the financial support of their children until their children have an independent income. The Children's Services Act 1986 provides for contributions by parents (section 99) whereby the court may order the parents of the child to pay such amounts by way of contribution to the cost of care of the child. Such costs may not exceed the amount paid under Child Care Agreements (section 94) entered into between the Director of Family Services and the parent of the child where such agreements include a financial contribution component by the parent of the child.

Northern Territory

562. The Maintenance Act of the Northern Territory picks up residual matters not covered by the relevant Federal maintenance scheme. Section 14 of this Act allows for the court to order that maintenance be provided by the non-custodial parent of a child where previous maintenance was not adequate or the defendant is about to leave the Northern Territory and the maintenance provisions are not adequate.

563. Section 26 of the De Facto Relationships Act provides for the acknowledgment of responsibilities accrued toward children arising out of a de facto relationship by enabling the court to order the parent not having custody of the child to make maintenance payments.

South Australia

564. With regard to the recovery of maintenance for children, the Community Welfare Act 1972 section 98, states that:

- The near relatives of any child (including a child under the guardianship of the Minister), shall be liable to pay for, or contribute towards the cost of maintenance of the child according to their respective financial capacities.
- The parents of a child shall be primarily liable under subsection (1) to pay for the maintenance of the child and any step-parent of the child shall be liable to pay for, or contribute towards, its maintenance only in the event of the death, disappearance (reasonable inquiries having been made) or financial incapacity of the parents or any combination of those circumstances applying in relation to the parents.

565. The Department has a statutory right to collect maintenance from the parents of children who are in the care of the State, (however this precludes collection of maintenance from parents of children who are young offenders under the Young Offenders Act 1993, and those who have signed a consent for adoption or who have been adopted or are in care pending adoption).

566. Where a person who has financial responsibility for a child lives in a State different from the child the above Act provides that if the defendant is resident in or proceeding to another Australian State then a request can be sent requesting that the order be made enforceable in that State (section 200). Where a person who has financial responsibility for a child is living in or proceeding to a reciprocating country, the Collector may send to an appropriate authority a request that the South Australian order be made enforceable in that reciprocating country (section 211).

(f) Children deprived of a family environment (Article 20)

Article 20

1. ***A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance by the State.***

2. ***States Parties shall in accordance with their national laws ensure alternative care for such a child.***

3. ***Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.***

Federal matters

The Youth Social Justice Strategy and Supported Accommodation Assistance

567. The Government has set in place a comprehensive package of measures to assist disadvantaged young people. This includes initiatives relating to accommodation for homeless youth, income support, employment, education, health and other services.

568. These measures are discussed under Part F (e), Basic health and welfare, Standard of living.

Aboriginal child placement principle

569. Previous Federal, State and Territory Government assimilationist policies are discussed under Part H(d), Special Protection Measures, Children belonging to a minority or an indigenous group, below. Currently, there is acceptance by all State and Territory Governments of the Aboriginal placement principle. The principle is that Aboriginal and Torres Strait Islander children who are unable to be cared for by their parents ought to be placed, wherever possible, with their own immediate family and community, or, failing that, elsewhere in the Aboriginal community. Aboriginal and Torres Strait Islander children are only placed with non-Aboriginal guardians as a last resort. The principle is generally adhered to in practice in all States and Territories although it is sometimes difficult to adhere to particularly in isolated parts of the country where resources are limited.

570. Although the recognition of the child placement principle is primarily the responsibility of the States and Territories, the Federal Government has been involved in the support of the principle both through policy development and funding. The Principle was developed in 1980 by Federal Government departments, including the then Department of Aboriginal Affairs, and was endorsed by the Federal Government and the States and Territories at the Council of Social Welfare Ministers in 1984 in the following form:

571. It is recommended that in the foster placement of an Aboriginal child a preference be given, in the absence of good cause to the contrary, to a placement with:

- a member of the child's extended family;
- other members of the child's Aboriginal community who have the correct relationship with the child in accordance with Aboriginal customary law; or
- other Aboriginal families living in close proximity.

572. Various Government reports have supported the principle and called for it to be established in legislation in all Australian jurisdiction. Among them was the Australian Law Reform Commission Report on the Recognition of Aboriginal Customary Laws which was issued in 1986. This report is currently under review by Government officials for the information of the Standing Committee of Attorneys-General.

573. The Department of Human Services and Health provides funds to the Aboriginal and Islander Child Care Agencies to assist them to carry out their functions in accordance with the principle.

574. As referred to in Part A, Aboriginal and Torres Strait children, the fourth term of reference of the inquiry by the Human Rights and Equal Opportunity Commission into the past compulsory separation of Aboriginal and Torres Strait Islander children from their families, is an examination of current laws, practices and policies with respect to the placement and care of Aboriginal and Torres Strait Islander children and the provision of advice on any changes required.

State and Territory matters

Australian Capital Territory

575. In the Australian Capital Territory Family Services' Principles of Placement Selection ensures that when a child is deemed to be in need of care, placement with relatives is considered as the first choice unless such placement is not available or the child's safety cannot be guaranteed. Placement with friends or members of the child's tribal or cultural group will also be considered. Family Services funds several non-government agencies to operate a range of foster care and residential care programs to meet the needs of children assessed to be in need of care. These placements are supervised and reviewed regularly. Family Services also operates a substitute care program. Family Services directly arranges, provides financial assistance and supervises foster care or residential placements for children on care orders or at risk of being declared Children in Need of Care.

New South Wales

576. In New South Wales the provisions of Article 20 are implemented through the Substitute Care Program administered by the Department of Community Services, in accordance with the Children (Care and Protection) Act 1987. When necessary, the Department of Community Services will take direct responsibility for the provision of care for a child. The Department provides a range of options for care of children within the Substitute Care Program. The Department directly arranges, provides financial assistance and supervises foster care or residential care placements for children who are under the guardianship of the Minister. Section 87 of the Act refers to the NSW Aboriginal Placement Principle.

577. The Department funds and licenses a range of agencies that provide alternative care for children in New South Wales. Administrative procedures have been developed that require all placements of children in alternative care to be supervised and reviewed regularly. In other circumstances the Department is able to provide financial assistance to the carers towards the cost of caring for a child. The Children (Care and Protection) Act 1987 provides that:

> The Director-General may, in respect of any child in alternative care other than a ward or protected person, grant an allowance to any person having the care of the child for any period during which the child is in that person's care.

578. Plans are underway to establish group homes and foster support services which will be conducted by Aboriginal people for Aboriginal children at risk of becoming institutionalised.

579. The Non-parental Care Allowance is an administrative arrangement to enable children to be placed within their own family or social networks and to avoid children coming into more structured forms of substitute care. The Community Welfare Appeals Tribunal has been established to hear complaints and appeals against decisions made on behalf of children.

Northern Territory

580. The Community Welfare Act 1983 empowers the Minister for Health and Community Services to declare a child in need of care. A child is defined to be in need of care where:

- the parents, guardians or the person having the custody of the child have/has abandoned him or her and cannot, after reasonable inquiry, be found;

- the parents, guardians or person having the custody of the child are unwilling or unable to maintain the child;
- the child has suffered maltreatment;
- the child is not subject to effective control and is engaging in conduct which constitutes a serious danger to his or her health or safety; or
- being excused from criminal responsibility under section 389 of the Criminal Code, he or she has persistently engaged in conduct which is so harmful or potentially harmful to the general welfare of the community measured by commonly accepted community standards as to warrant appropriate action under the Community Welfare Act 1983 for the maintenance of those standards.

Queensland

581. In Queensland the special protection and care provided to a child temporarily or permanently deprived of his or her family environment may be met by one of the following options:

- emergency short-term or medium-term foster care;
- formal long-term alternative care;
- transfer of guardianship to care providers;
- adoption; or
- residential care.

582. All foster parents must be registered carers under the Children's Services Act 1965. Foster parents must undergo regular training and have regular reviews in relation to their parenting of children placed in their day-to-day care. Foster parents receive a weekly allowance from which they are expected to provide adequate food, clothing and education for the child. For children who cannot return to their family within appropriate time limits, an alternative placement offering life-time lasting relationships needs to be sought. This placement needs to be made within the shortest possible time.

583. The Child Placement Principle is a major protective services policy document providing a working framework for both staff of the Department of Family Services and Aboriginal and Islander Affairs and the Aboriginal and Islander Child Care Agencies in Queensland. In accordance with the Child Placement Principle, it is the policy of the Department, wherever possible, to place sibling children together in alternative care and to place Aboriginal children with Aboriginal care providers and Torres Strait Islander children with Torres Strait Islander care providers.

584. The Department of Family Services and Aboriginal and Islander Affairs has recently undertaken extensive consultation upon a review of the Children's Services Act 1965. It is intended that new legislation to replace the Act will contain provisions relating to Aboriginal and Torres Strait Islander children which are consistent with the Child Placement Principle.

585. Children with intellectual disabilities whose parents are unable or unwilling to exercise their guardianship role, or who are at significant risk of harm, may be taken into the care of the Director-General pursuant to the provisions of the Children's Services Act 1965. The Division of Protective Services and Juvenile Justice, under its Protective Services program, administers alternative care arrangements for children under care orders who have been separated from their family. Alternative care options include foster care and licensed residential care.

South Australia

586. In South Australia a range of services is provided by the Department of Family and Community Services which provide specialised assistance to families to assist them to remain intact and able to care for their own children. Where this cannot continue and the child cannot remain living with his or her family, either temporarily or permanently, provision for alternative care of the child is provided under the Community Welfare Act 1973. These alternatives include adoption, long and short term foster care, respite care and residential care.

Tasmania

587. The principles contained in Article 20 are incorporated in the Service Co-ordination Manual of the Community and Health Department. The objective of the alternative care services program of the Department of Community Services is to ensure that all children without appropriate adult care receive high standard alternative care which provides for their particular development and well-being and achieves security either through re-establishment with their own family or permanency in alternative care.

588. The principles of Article 20 are not clearly incorporated in the Child Welfare Act 1960 or the Child Protection Act 1974. However, new legislation is proposed to contain explicit principles and provision for services which include parents in decision making about their children and which impose a hierarchy of placement options to ensure that placement away from the family is the option of last resort. In such instances, placement options would include foster family or group care in a family group home.

589. Respect for a child's cultural, ethnic and religious background is documented policy in the Service Co-ordination Guidelines. Practices which support a child's continued access to his or her natural family are a policy requirement, although they are not in the Child Welfare Act 1947.

Victoria

590. In Victoria alternative accommodation and care services are provided for children and young people under the age of 18 years who are either temporarily or permanently unable to live with their family of origin, or who are significantly at risk of being in this situation. Reasons for family separation include temporary family crisis, family rejection and the need to protect children and young people who have experienced significant abuse or neglect. Initial priority is given to placing children in a family-based environment, for example, foster care or community placement, in preference to institutional care.

591. Accommodation services, including secure welfare accommodation services, have been established regionally and located within the community, replacing institutional facilities. These services are delivered by both Health and Community Services and non-government organisations. Non-government organisations, approved as 'community services' under the Victorian Children and Young Person's Act 1989, are contracted to provide specific services via funding and service agreements. Accommodation is provided in specially established facilities which include family group homes and hostels, medium term units and home based services such as foster care and adolescent community placements. The emphasis is to place children within their own extended family or network to minimise disruption. Approximately 3,000 Victorian children and young people are placed in accommodation services at any given time.

592. The Victorian Government provides support for homeless young people via a number of programs. The Supported Accommodation Assistance Program (SAAP) is a joint Commonwealth/State initiative which is administered by the Department of Health and Community Services in Victoria. Homeless young people are one of five identified target groups in the program. Services range from short term crisis support to longer term transitional support. Outreach services are also provided. Accommodation may be directly provided or the service links the client to externally available accommodation. As at June 1995 151 services were funded, specifically designed to cater for young people. Approximately 7,500 young people are supported for varying periods in any one year. In addition approximately 3,000 children with accompanying adults access SAAP services. The majority of such children are under

five years old. In the latter case the Department has recently commenced policy and practice reviews to ensure children receive appropriate services.

593. The Youth Homelessness Taskforces, which were established in 1989 and are administered by the Office of Youth Affairs, assist young people to overcome the sense of isolation which young people and families feel in the midst of family breakdown and to return to the family home where appropriate. Where returning home is not possible, every assistance is given to find accommodation and provide other necessary support as determined on a case by case basis.

Western Australia

594. In Western Australia children found to be in need of care and protection become wards of the Department for Community Development and are provided with care and support. The forms of care available include foster care, group home care, guardianship and adoption. When placing children, the form of care most suited to the individual's needs is sought. This includes consideration of ethnic, cultural, religious and linguistic background.

595. A range of out of home care services are also provided for children and young people who are not wards. Foster and group home care is provided by the Department for Community Development and the private sector. Standards of care in the private sector are monitored by the Consultative Committee on Out of Home Care. The Department is represented on this Committee and it provides a forum for identifying needs for new services and for developing and co-ordinating services.

596. Crisis accommodation for homeless young people is provided through funding support to the private sector. Where possible, these services assist young people to return home or to make the transition to independent living.

(g) Adoption (Article 21)

Article 21

> ***States Parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:***
>
> ***(a) Ensure that the adoption of a child is authorised only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that***

the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognise that intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Federal matters

Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption

597. Australia took a high profile in the preparation of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. Representatives from the Federal Attorney-General's Department and the Council of Social Welfare Ministers attended all Special Commission Sessions in The Hague. Meanwhile, in Australia, the Intercountry Adoption Standing Sub-committee of the Health and Community Services Ministerial Council was set up to monitor the progress of the draft Convention, to develop policy and administrative positions for negotiation discussions at The Hague, and to maintain cooperation between the Federal and State Governments for the eventual implementation of the Convention obligations in Australia.

598. At their meeting in 1994, the Community Services Ministers agreed, in principle, to recommend that the Convention be ratified by Australia, with the Federal Attorney-

General's Department to be the designated Central Authority and State Community Services departments to be additional Central Authorities with all responsibility for casework. However, the other administrative arrangements to implement the Convention in Australia have not been finalised and a final decision to ratify the Convention has not yet been made. It is now expected that Australia will be in a position to ratify the Convention in 1996.

Intercountry adoption - current arrangements

599. The Family Reunion component of the Migration Program includes provision for the entry of children both for adoption and who have been adopted outside Australia by Australian citizens or residents.

600. Intercountry adoption is primarily a State or Territory responsibility. In most cases the sponsoring parent or parents are well informed on entry requirements by State or Territory community service departments during an extended counselling and assessment process. The Department of Immigration and Ethnic Affairs, in close consultation with the States and Territories, is essentially only responsible for the entry mechanism facilitating inter-country adoption. The visa criteria and procedures give effect to State and Territory welfare requirements.

601. In 1986 Federal and State Ministers with responsibility for welfare matters endorsed a set of principles for entry of children to Australia for adoption. The primary adoption principle agreed is that inter-country adoption would continue to operate as a service for children and not as a humanitarian or emergency program.

602. The legislation and policy guidelines for adoption visas reflect this position. The visa criteria for the permanent entry of children are specified in the Migration Regulations.

603. Where the adoption is to take place in Australia, the proposal to adopt the specific child must be supported in writing by the relevant Australian State or Territory child welfare adoption authority (who is responsible for vetting the suitability of adoptive parents). Furthermore, the child must be free for adoption, in that the laws of the overseas country are complied with and the rights and wishes of the relinquishing parent or parents have been protected. The child must also have approval to leave the overseas country with his or her adoptive parents.

604. The Migration Regulations also provide for people who are usually resident outside Australia to bring an adopted child to Australia provided they have complied with the adoption laws of the country of origin. State law recognises overseas

adoptions, usually when the adoptive parent or parents have lived in the country of adoption for more than 12 months. As in the situation where the adoption is to take place in Australia, the child must be free for adoption, in that the laws of the overseas country are complied with and the rights and wishes of the relinquishing parent or parents have been protected. The child must also have approval to leave the overseas country with his or her adoptive parents.

605. Where a child enters Australia under inter-country adoption arrangements to be adopted in Australia, or the child is adopted overseas and that adoption is not recognised under State or Territory law, the child enters Australia under the Immigration Guardianship of Children Act 1946. This provides that the Minister for Immigration and Ethnic Affairs is the guardian of the child until he or she turns 18, leaves Australia permanently, becomes an Australian citizen, or by special determination as the Minister may determine otherwise. In practice, this power is delegated to State and Territory welfare administrators.

606. The adoption visa class is one of the smaller family categories. In recent years arrivals have been around the 300 level from a wide variety of sources, principally the Republic of Korea, India, the Philippines, Sri Lanka and Thailand.

State and Territory matters

607. Most Australian States and Territories have reformed, or are in the process of reforming, their 1960s adoption legislation, the main area of reform being that of access to adoption information. The result has been a lessening of the secrecy provisions surrounding adoptions, in recognition of the adverse social and psychological effects often suffered by adoptees and their birth parents as a result of their separation.

Australian Capital Territory

608. In the Australian Capital Territory the Adoption Act 1993 provides the framework regarding adoptions. It provides for the adoption of persons who are under 18 or who have been brought up as a person under a de facto adoption. Before making an adoption order, the court must be satisfied that the adoptive parents are fit and proper people to be the parents of a child, and are suitable persons to adopt a particular child. The effect of an adoption order is that the adopted child becomes a child of the adopter/s, as if he or she were the natural child of that person or persons. The conduct of adoptions by competent authorities complies with the Convention and adoptions are supervised by the court by way of a report by Family Services.

609. The Adoption Act 1993 clearly re-affirms the paramount interests of the child and that the welfare of the child must be considered in the adoption process. The court must have regard to the wishes of the child before making an adoption order. The court will also have to consider the wishes of the child's birth parents as to the race or ethnic background of the proposed adoptive parents, and the religious upbringing of the child.

610. An Adoption Information Service has been set up to provide information and counselling services, to register Information and Contact Vetoes, and to maintain a Contact Register.

611. Intercountry adoptions are regulated to conform with standards consistent with Australian laws with respect to relinquishment of a child from an overseas country (Adoption of Children Act 1965). Only countries which have similar legislation protecting the rights of relinquishing parents are selected for the Australian Capital Territory adoption program. Should any country of origin evidence any malpractice in the approval process, or conflict with Australian Capital Territory's stringent adoption guidelines, that country is deleted from further negotiations. The Adoption Act 1992 restricts the adoption of children brought from overseas for the purpose of adoption to those whose adoptions are arranged by an agency approved in the child's country of origin, according to approved arrangements, and within the laws of the country of origin.

New South Wales

612. The New South Wales Department of Community Services is responsible for the adoption of children in New South Wales, pursuant to the Adoption of Children Act 1965. There are also a number of non-Government organisations which are licensed to carry out adoptions. These organisations are: Centacare Adoption Services, Anglican Adoption Agency, Barnardos Australia and the Seventh Day Adventist Adoption Agency. In practice adoption would only be considered as an option where there is believed to be no prospect of reconciliation or ongoing contact with the child's natural family, or alternatively, in the case of a new born baby, where a decision to adopt has been made by the natural parent(s) immediately after the child's birth.

613. The Adoption of Children Act 1965 and adoption procedures in New South Wales distinguish between the recognition accorded to adoptions which have taken place in other countries and the adoption of foreign children in the State of New South Wales. Intercountry adoptions arranged through the Department of Community Services occur in the same manner and by the same legal means as local adoptions.

Legal requirements for both adopting parents and adopted children are the same whether they apply to intercountry adoptions or local adoptions. The recognition of foreign adoptions under the Adoption of Children Act 1965 generally occurs for the purpose of the grant of Australian citizenship to a child who has been previously adopted overseas.

614. The Adoption of Children Act 1965 has privacy provisions, which provide that the contents of Reports will not be disclosed, and restrictions on the inspection of records. The Adoption Information Act 1990 covers the following privacy matters:

- the information to which persons are entitled;
- discretion to supply prescribed information;
- guidelines regarding the supply of information by information source;
- access to court records;
- unauthorised disclosure of information;
- undertakings not to contact person who has lodged contact veto;
- offences re veto on contact; and
- reunion procedures.

Northern Territory

615. The Adoption of Children Act 1994 provides for the adoption of persons who are under 18 years of age or who have been brought up under a de facto adoption. The adoptive parents must be at least 18 years of age, and must be at least 18 years older than the child (if a man) or 16 years older than the child (if a woman). The Act provides that before making an adoptive order, the court must be satisfied that the adoptive parents are fit and proper people to be the parents of the child, are suitable persons to adopt the child and that the interests of the child will be promoted by the adoption. The recent amendments to the Act include reference to the Aboriginal Placement Principal, ensuring that the cultural considerations relevant to the child are taken into account when the child to be adopted is Aboriginal.

616. The recent amendments to the Act also enshrine the principles of the Article regarding the informed consent of the relinquishing parent. Section 33 of the Act now provides that the consent of the relinquishing parent can be revoked within one month after the consent was originally signed, extending this period from the original seven days. The Court is prevented from making an order for adoption where the consent is made before the birth of the child, or within one month after the birth of the child and

in that case, the Court must be satisfied that the mother was in a fit condition to consent at the time the consent was signed.

617. The Adoption of Children Act 1994 provides that Northern Territory courts recognise adoption orders made by courts of foreign jurisdictions subject to limitations set out in the Act. Now that the Australian Government has become a signatory to the Hague Convention on Intercountry Adoption, the Act will be reviewed to comply with the new structural arrangements associated with this international agreement.

Queensland

618. In Queensland the Adoption of Children Act 1964 and the Adoption of Children Regulations apply. The principle of the best interests of the child is established in the Adoption of Children Act 1964. The objective of this Act is to facilitate securing for children who are available for adoption the best possible placements, having regard to the welfare and interests of the children, and to protect the rights and to provide for servicing the needs of all parties to the adoption process.

619. Under the provisions of the Adoption of Children Act 1964 the Department of Family Services and Aboriginal and Islander Affairs is the sole authority in Queensland for the provision of adoption services, including adoption orders. A valid, informed consent duly witnessed by delegated authority is required from the parent and/or guardian in the regulated form.

620. Queensland legislation makes provision for intercountry adoption by means of a separate list, referred to in the Adoption of Children Act 1964 as the Foreign Children's Adoption List. By definition, this refers to children resident in a country outside Australia. By law, once an adoption order is made, a child who entered Queensland from an overseas country for the purposes of adoption, enjoys the same rights, safeguards and standards as exist in the case of local adoption.

621. Queensland authorities will only deal with approved authorities in the overseas country in the development of mutually agreed arrangements and procedures for intercountry adoption.

622. Significant changes to the adoption legislation occurred in 1990 and 1991. From 1 June 1991 adopted persons over 18 and birth parents have been able to obtain identifying information if the other party has not objected to contact and the disclosure of identifying information. Adult adopted persons and birth parents may object to contact only, thereby allowing the disclosure of identifying information, but restricting contact.

623. Non-identifying correspondence between a birth parent and adopted child and/or adoptive parents can occur at any time when both parties are willing. Identifying communication/contact between the two parties can be approved by the Director-General of the Department of Family Services and Aboriginal and Islander Affairs for some special needs children if their circumstances fall under of the Adoption of Children Act 1964.

South Australia

624. In South Australia the adoption of children is provided for under the Adoption Act 1988. The Act has a general principle that all proceedings must have the interests of the child as the paramount consideration. A major objective of the Act is openness in adoption. The Act sets out provisions under which various parties to adoption may gain access to adoption information. The Act makes separate mention of the adoption of Aboriginal children. Unless special circumstances exist, an adoption order for an Aboriginal child will only be made in favour of a member of the child's Aboriginal community who has the correct relationship in accordance with Aboriginal customary law or, if there is no such person, some other Aboriginal person.

625. The Adoption Act 1988 has a number of provisions which provide for the privacy of the child. It provides that an application for an adoption order will not be heard in an open court and that the records of proceedings for an adoption order will not be open to inspection. The Act also provides that information can be accessed by the natural parent or a relative once the adopted child is over 18 years. Certain information may be provided which does not enable the adopted person to be traced. Prior to this, information may only be provided if the adoptive parents and the adopted child (if over 12 years) has approved the disclosure. Information relating to children adopted prior to proclamation of the Act may be released only if a veto has not been placed by either the child or the natural parents.

626. The Act makes it an offence to publish information in the news media relating to people involved in proceedings under the Act or concerning material related to adoption.

627. With regard to intercountry adoption, provision is made within the legislation to attempt to ensure that the children concerned receive the same safeguards as do those children involved in domestic adoption. The legislation provides that recognition of an adoption from another country will occur if:

- the order was made in accordance with the law of that country;

- the circumstances in which the order was made would, as if they had existed in the State of South Australia, have constituted a sufficient basis for making an adoption order under the Act; and
- the proceedings in which the order was made involved no denial of natural justice or failure to observe the requirements of substantial justice.

Tasmania

628. The Adoption of Children Act 1988 and Regulations establish adoption as a service for children to be conducted only by proper authorities. In Tasmania the State Government Agency conducts local and intercountry adoptions. Centacare is an approved Agency for local adoption. Tasmania has joined with other States and Territories to develop national principles which are consistent with Article 21.

629. Privacy provisions are contained in several sections of the Adoption of Children Act 1988. These include: provision for confidentiality of adoption records (records are not available or open for inspection by any person); a person is not entitled to information relating to the personal affairs of another person, whether living or dead; and protection of the identity of a child, his or her natural and adoptive parents, except that by mutual consent in writing they can be identified to each other.

Victoria

630. In Victoria the Adoption Act 1984 provides the legislative framework for adoption. This Act provides that the welfare and interests of the child are the paramount consideration in adoption. The legislation provides that only authorised agencies can arrange adoptions and establishes requirements for adoptive parents, the giving of informed consent by the child's parents or guardians, dispensing of consent and the making of a court order.

631. The Adoption Act provides that records relating to an adoption will only be made available to prescribed individuals in certain circumstances defined by the Act. The Act also provides that a person shall not give information relating to the personal affairs of a person other than the applicant except in accordance with the Act.

632. Legislative provisions are also established for intercountry adoption in the Adoption Act 1984. These provisions conform with those for the adoption of children born in Australia, apart from the age requirement for adoptive parents (who may be older in the case of intercountry adoption).

Western Australia

633. In Western Australia the Adoption of Children Act 1986, which was substantially amended in 1985, is the primary legislation governing the practice of adoption. It contains provisions that meet the Convention's requirements for determining a child's status and the necessary consents required for adoption and international adoption. Recently this legislation has been reviewed and the recommendations of the Adoptions Legislative Review contain proposals for further ensuring the rights of children under the Convention. New legislation is currently being drafted for presentation to Parliament.

634. The legislation states that the child's welfare and interests are paramount. Provision is also made to respect the views of the child. The consent of a child aged between 12 and 18 is specifically required for adoption and to the names by which he or she will be known. Provision is made for the legal representation of children where an adoption order is contested.

635. The Adoption of Children Act 1986 also prohibits the publication of anything that will identify or be likely to identify any person:

- who is or proposes to be the subject of or a party to an application for an order or adoption;
- who is the relative of a person who is the subject of or a party to an application for an order of adoption;
- who has consented to the adoption of a child; or
- who is or may be affected by an order of adoption.

636. In relation to intercountry adoption, the joint operation of the Adoption of Children Act and the Immigration (Guardianship of Children) Act 1946 ensures that any child entering Western Australia for the purpose of adoption, whether for whom a local adoption order will be sought or for whom recognition of an overseas order will be sought, will enjoy the same safeguards and standards as a local child for whom an order of adoption is sought.

(h) Illicit transfer and non-return (Article 11)

Article 11

1. ***States Parties shall take measures to combat illicit transfer and non-return of children abroad.***

2. ***To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.***

Federal matters

The Hague Convention on Civil Aspects of International Child Abduction

637. The Hague Convention on Civil Aspects of International Child Abduction was ratified by Australia in October 1986 and the Convention came into force for Australia on 1 January 1987. Australia has accepted the accession of every other country since that time and the Convention now operates between Australia and 38 other countries. In the period from January 1987 until February 1995 there were 282 abductions to Australia and in the period from January 1988 until February 1995 there were 211 abductions from Australia which were dealt with under the Hague Convention which aims to secure the prompt return of children wrongfully removed to or retained in any country which is a party (statistics were not kept on abductions from Australia during the first year).

638. Australian courts take a very strict approach in interpreting and upholding the Convention's principles, in particular, those Articles which provide the exceptions to return of abducted children. Though precise figures are not available, it is estimated that in over 90 per cent of cases, children abducted to Australia are ordered to be returned to their country of habitual residence. Australia takes the view that a strict interpretation and a uniform application of the Convention by all parties will ensure that the Convention remains the most effective deterrent against parental child abduction.

639. Australia also seeks to promote the Convention amongst countries in our region. Only New Zealand and Australia from this region are Parties to the Convention. Since 1992, the Government, through its Foreign Affairs posts, has approached many countries which are not yet Parties to the Convention, and particularly countries in the Pacific Rim, to give consideration to joining. A number of countries responded

favourably to those representations, and additional representations continue to be made on an on-going basis whenever an appropriate occasion arises.

(i) Abuse and neglect (Article 19, including physical and psychological recovery and social reintegration (Article 39)

Article 19

1. *States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*

2. *Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.*

Article 39

> *States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.*

Child abuse and neglect

Federal matters

640. The Family Court is required under mandatory notification provisions of the Family Law Act 1975 to bring to the State Authorities attention allegations of child abuse or neglect which come to the attention of the Court.

National Child Protection Council

641. The Federal Government established the National Child Protection Council in 1991 in response to the report of the National Committee on Violence. The Council includes representatives of Federal, State and Territory Governments, and community members. The Council Secretariat is located in the Department of Human Services and Health. The role of the Council is to focus the attention of Governments and the community on the need to reduce the incidence of child abuse and neglect, and to promote and commission national research on the prevention of child abuse.

642. The co-operation of Federal, State and Territory Governments through the National Child Protection Council led to the development of the National Prevention Strategy for Child Abuse and Neglect released in September 1993. The Strategy is a co-ordinated plan of action which aims to challenge the beliefs and attitudes in the community which allow child abuse to continue. It also aims to promote an environment which supports families and communities and helps them to meet their responsibilities to care for and protect children. The 1994-95 Federal Budget provided new funding of $12 million over four years to implement the Federal elements of the Strategy. The Federal Government has responsibility for broad national activities, such as a community education campaign and national research program. State and Territory Governments have responsibility for specific and localised activities, including the development of community support networks, children's education programs, parenting programs, early intervention services, and information and advisory services.

643. The Federal Government established the National Child Protection Clearing House to co-ordinate information and research on the prevention of child abuse and neglect. The Clearing House also has network, outreach and advisory functions. Originally located at the Australian Institute of Criminology and now with the Australian Institute of Family Studies, the National Clearing House is undertaking an on-going audit of all child abuse prevention programs, research and activities.

644. Part of the National Child Protection Council's terms of reference require it to take into account the special child abuse prevention needs of children from non-English speaking backgrounds, children with physical disabilities and developmental delay, Aboriginal children, and Torres Strait Islander children. The National Prevention Strategy for Child Abuse and Neglect also identified these groups of children for whom issues need to be addressed in a culturally appropriate and sensitive way. The Department of Human Services and Health has commissioned research and consultations aimed at the development of separate plans of action to address the

special child abuse prevention needs of children from these groups. These projects will conclude progressively in 1995.

645. In May 1995 a comprehensive report titled The Commonwealth's Role in Preventing Child Abuse was released. The Report was commissioned by the Minister for Family Services and undertaken by the Australian Institute for Family Studies. The Report noted that policies preventing child abuse include health, education, and community service polices relating to employment, housing and income support. They also include policies which protect and promote the status of women, policies which eliminate discrimination and polices to prevent or eliminate violence. The Federal Government has made major achievements in these areas. Recommendations made in the report included the improvement by the Federal Government of the mechanisms for co-ordinating its own policies and programs The Report is now being considered by the Government.

Other activities

646. The National Health and Medical Research Council (NHMRC) has recently established a Working Party on Child Sexual Abuse, to be overseen by its Health Advancement Standing Committee. The Working Party will review what is known about the impacts and implications of child sexual abuse, in order to identify the needs of those at risk and opportunities for effective intersectoral secondary preventive activities across a variety of settings. The Working Party's draft report will be circulated for public consultation prior to it being finalised, according to the requirements of the NHMRC Act 1992. It is expected that public consultations will commence in late 1996.

647. The Federal Government is fostering the development of uniform State and Territory legislation to deal with the sexual abuse of children within Australia and associated activities such as the production, possession and sale of child pornography. This is further discussed in Part H(c)(iii), Special protection measure, Children in situations of exploitation, Sexual exploitation and sexual abuse, below. The issue of child smacking is discussed in Part D(h), Civil rights and procedures, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, above.

State and Territory matters

648. All Australian jurisdictions recognise the special needs of children for care and protection, particularly where that care or protection cannot be provided by families.

There are legislation and programs designed specifically to protect children and to provide assistance for children at risk.

649. Criminal sanctions are imposed in all jurisdictions for people who mistreat children, whether that mistreatment takes the form of actual physical abuse, abandonment of young children or failure to provide children with the necessities of life. In addition, in each jurisdiction, child welfare agencies exist whose task it is to act in the best interests of a child to preserve the welfare of the child.

650. Further information is provided in Part G(a), Education, leisure and cultural activities, Part H(c)(iii), Special protection measures, children in situations of exploitation, Sexual exploitation and Sexual abuse, below.

651. The Australian Capital Territory and Western Australia are the only jurisdictions in Australia where professionals are not mandated to report child abuse. However, in December 1993 the Australian Capital Territory Community Law Reform Committee recommended a phased approach to the introduction of mandatory reporting in the Australian Capital Territory, with adequate resources being provided for protective and follow up services. The report is currently awaiting community and Government responses.

Australian Capital Territory

652. The abuse and neglect of children are dealt with in the Children's Services Act 1986. Family Services of the Bureau of Housing and Community Services has statutory responsibility for intervening and providing services to children subject to all forms of maltreatment and abuse. The Branch is responsible for the protection of children who are in need of care and investigates notifications of suspected physical or sexual abuse of children, where there are reasonable grounds to suspect that such abuse has occurred or is likely to occur. When a child is in need of care he or she may be placed in a shelter by a person authorised to do so. The parents of the child must be notified as soon as is practicable. If a child is in hospital and urgent action is needed to safeguard his or her welfare, the child may be detained in hospital by a direction in writing from an authorised person. Requirements for the notification of the parents apply.

New South Wales

653. Article 19 is implemented through the programs of the Department of Community Services and the provisions of the Children (Care and Protection) Act 1987. The Department has a statutory responsibility to investigate notifications of

child abuse and neglect and to take appropriate action aimed at protecting the child. Further discussion of action taken cases of abuse or neglect is found in Part E(c), Family Environment and alternative care, separation from parents above. Medical practitioners have a duty to report child abuse to the Department of Community Services. Teachers and school counsellors must report child sexual assault. Their internal guidelines supplement this mandate to recommend that they also report certain other forms of abuse, although they do not go so far as to require the reporting of all forms of suspected physical and emotional abuse.

Northern Territory

654. The Criminal Code provides that a person in charge of a child under 16 years has a duty to provide the necessaries of life for that child. Any such person who fails to discharge this duty so that the child is likely to be endangered or his or her health is likely to be permanently injured is guilty of a crime.

655. The Community Welfare Act 1983 operates to protect children from general abuse and maltreatment. Section 13 empowers a member of the police force to investigate instances where maltreatment of a child is suspected. The police officer must make a report to the Minister of any suspected instances of maltreatment of a child. Section 14 provides that any person who suspects that a child is being maltreated must report such a suspicion to the Minister. Section 15 provides that a person in charge of a hospital who has a child patient whom he or she suspects has been maltreated may detain the child for the purpose of further medical treatment and investigation.

656. The Community Welfare Act 1983 provides that once the Minister receives a report of maltreatment he or she must, as soon as possible, cause a further investigation to be undertaken and at its completion take such action as he or she deems necessary. The investigation is conducted by a Child Protection Team, established under the Act. The function of the team is to investigate reports and co-ordinate action between the relevant Government departments to ensure the appropriate action is taken.

657. The Community Welfare Act 1983 provides that a child shall be taken to have suffered maltreatment where:

- he or she has suffered a physical injury causing temporary or permanent disfigurement or serious pain or has suffered impairment of a bodily function or where there is substantial risk of him or her suffering such an injury or impairment;
- he or she has suffered serious emotional or intellectual impairment evidenced by severe psychological or social malfunctioning measured by the commonly accepted standards

of the community, because of his or her physical surroundings, nutritional or other deprivation, or the emotional or social environment in which he or she is living; or

- he or she has been sexually abused or exploited, or that there is substantial risk of such abuse or exploitation occurring, and his or her parents, guardians or persons having custody are unable or unwilling to protect him or her from such abuse or exploitation.

658. The Family, Youth and Children's Services Division of the Department of Health and Community Services ensures immediate and longer term protection of children by referrals to support agencies, placement of children in alternative care, instigating necessary court action, crimes counselling, providing preventive and rehabilitative services for children at risk of maltreatment and their families, and by developing programs for the rehabilitation of victims and perpetrators in child abuse matters.

Queensland

659. In Queensland the Health Act 1937 makes notification of suspected abuse and neglect mandatory for medical practitioners. Health Authority personnel are members of multi-disciplinary teams that coordinate the management of cases. The Health Department is represented on the Co-ordinating Committee on Child Abuse, which oversees child protection in the State. The Act allows a child to be admitted to a hospital for a period of no longer than 96 hours when a medical officer in charge of a hospital suspects on reasonable grounds the maltreatment or neglect of a child in such a manner as to subject or be likely to subject it to unnecessary injury, suffering or danger.

660. The Division of Protective Services and Juvenile Justice has a general mandate to protect children who have suffered, or are likely to suffer, abuse or neglect without undue intrusion into family life. The Protective Services program however targets children who suffer or are at risk of intra-familial abuse, and does not have direct responsibility for children who suffer abuse or neglect while in residential care provided by Intellectual Disability Services. The Division of Intellectual Disability regards abuse or neglect of children in its residential services as a police matter, to be dealt with under the criminal law, and as well has internal administrative procedures for reporting, investigation, treatment and follow-up of such instances. These procedures are designed to protect the rights of the child.

661. The Queensland Police Service enforces both the Children's Services Act 1965 and the Criminal Code in relation to the protection of children from all forms of physical, emotional and sexual abuse, and the investigation of child neglect, maltreatment or exploitation. This legislation is implemented primarily through the

Juvenile Aid Bureau, which is dedicated to the investigation of offences and allegations of this kind. In conjunction with other primary response agencies, such as the Department of Family Services and Aboriginal and Islander Affairs and doctors and other health professionals, the Police Service ensures that appropriate protective measures are instigated when matters are brought to its attention. The Education Department has given teachers guidelines for the reporting of suspected child abuse and reporting of abusers.

662. The Department of Family Services and Aboriginal and Islander Affairs administers the following programs relevant to Article 19:

- Alternative Care and Intervention Services Program: This is a State funded program which aims to assist shared family care, residential case and specialist therapeutic services.
- Child Abuse Prevention Program: This is a State funded program providing funds to assist non-Government organisations and Local Government Authorities to provide activities and develop strategies for the prevention of child abuse.
- Domestic Violence Initiatives Program: This is a State funded program providing grants to approved organisations to reduce the occurrence of domestic violence within families and to encourage early intervention in cases of domestic violence.

South Australia

663. The policy of the Department of Family and Community Affairs ensures that children receive adequate parental care and are protected against maltreatment. The Community Welfare Act 1973 makes it an offence to maltreat or neglect a child. The Children's Protection Act 1993 details the responsibilities of the Department, the Children's Court and the police to interview in instances of alleged child maltreatment. It is based on the principle that children have the right to enjoy parental care and protection and to have their welfare safeguarded. The Department has a responsibility to promote a network of services which assist parents to carry out their responsibilities. When this parental responsibility is not carried out or when parental care is harmful to the child, the Department must take appropriate action to protect the child.

Tasmania

664. The two major pieces of legislation designed to protect children are the Child Welfare Act 1960 and the Child Protection Act 1974. The Child Protection Amendment Act 1986 provides for crisis intervention by State agencies in instances of the physical, sexual or emotional abuse of a child. As such it represents a broadening of the powers available under the Child Protection Act 1974. It is proposed to develop

new legislation in 1996 which will replace both the Child Protection Act 1974 and the Child Welfare Act 1960. The proposed legislation will focus on the prevention of abuse as well as the protection of children from further abuse.

665. The Government agency that has major carriage for this area is the Department of Community Services. The Department also has responsibility for housing services and services for people with disabilities. The Child Protection Act 1974 gives the State power to intervene to protect children from abuse and neglect. Protective Behaviours Programs are funded to assist children to develop self-protective strategies and to encourage them to seek help if they need it.

666. The Child Protection Board has the statutory responsibility for child protection in Tasmania, although its authorised officers are employed by the State welfare agency. The Board is responsible to ensure that investigation and appropriate follow up action is taken. The Board authorises the initiation of judicial involvement in the Children's Court where no other option can be found to protect the child.

667. A range of family support and other primary prevention services are provided through Government funding of non-Government organisations. In addition, specialist medical, psychological and counselling services are provided through Family and Child Health and Community Health Services and through sexual assault services. These services aim not only to prevent children from being abused and neglected, but also are accessed to assist with the re-integration of children into their families and communities.

Victoria

668. Since 1982 there have been major developments in Victoria's child protection system. The Department of Health and Community Services now has responsibility for protective services with the police involvement primarily where criminal aspects are involved. Management and delivery of child protective services have been improved through increased staffing, enhanced supervision and in-service training. An after hours service has been introduced throughout the State to provide 24 hour access to child protection services. Family support services which aim to reduce the need for protective intervention have also been strengthened.

669. The introduction of the Children and Young Persons Act 1989 represents a major step in formalising and strengthening child protection practice. The Act clearly separates the Family and Criminal Divisions of the Children's Court, and steps have been taken to ensure the separation within the service system of young offenders from those children in need of protection, for example, through the redevelopment of

central institutions. The Children and Young Persons Act 1989 also contains a number of practical measures aimed at ensuring the safety of children and respecting the integrity of the family. These include provisions intended to strengthen the rights of children and their families relative to those who seek to intervene, to preserve and strengthen families wherever possible, and to actively promote pluralist cultural values.

670. Child, adolescent and family psychiatry services offer both residential and community based programs. These services are provided by a range of specialist health practitioners including child psychiatrists, child psychiatric nurses, social workers, child and neuropsychologists and occupational and child therapists.

671. The plight of young people in abusive situations at home was improved through the Crimes (Family Violence (Amendment)) Act 1990. This Act enables young people between the ages of 14 and 17 (or a third party on their behalf) to apply for an order against a family member to prevent further or threatened violence against them or their property. Court procedures in relation to the prosecution of offences which involve children have been changed to make it easier for courts to accept children as witnesses and for children to testify (for example, use of closed circuit television when hearing testimony of children). The reporting of child abuse is not yet mandatory. The introduction of mandatory reporting of child abuse was introduced commencing with the gazettal of doctors, nurses and police on 4 November 1993 and primary and secondary school teachers and principals on 18 July 1994.

672. The Family Violence Prevention and Support program has piloted models of service provision to children and adolescents who have lived in families where there is violence. The services aim to provide children with ways of coping with the trauma and developing more positive relationships and the further development of such support services is a priority for the program. In addition services have been developed for changing men's behaviour, targeting men who have been violent to family members and who wish to learn new behaviours. Standards for men's behaviour have been developed that emphasise the safety of women and children, and parenting issues and skills are included in the programs.

Western Australia

673. In Western Australia it is the Department for Community Development's mandate under the Child Welfare Act 1947 to respond effectively to allegations of child abuse and neglect. This is done through divisional offices where allegations are investigated and, when found to be substantiated, protective action or family support is

provided in order to ensure protection is achieved. The Department also supports and assists other agencies and community groups to provide support and protection.

674. In relation to psychological recovery, the Department's Child Protection Policy states:

> The Department in co-operation with other agencies, should provide comprehensive treatment services for children and their families as this is essential to future prevention of abuse. This is achieved through the provision of treatment services by divisional psychologists, specialist child protection workers and field officers.

675. The Department for Community Development can intervene in the lives of children and their families to protect children from harm under provisions of the Child Welfare Act 1947, the Adoption of Children Act 1986 and the Children's Court of Western Australia Act 1988. Proposed legislation will reduce the degree of administrative discretion currently allowed in favour of increased judicial oversight of departmental actions. It will do this by:

- restricting the grounds for a care and protection application to where the child has no effective legal guardian or the child is experiencing, or is likely to experience, significant harm as a result of maltreatment or self injurious behaviour and the child's parents are unable or unwilling to prevent that harm occurring;
- introducing principles that promote the resolution of protective issues without removing the child from his or her family and that reserve court ordered intervention and severance of parental guardianship for cases where this is necessary to protect the child;
- providing for a temporary custody order to enable allegations of maltreatment to be investigated;
- giving the court the power to determine disputes over custody and access;
- providing an increased range of orders, where the need for care and protection has been judicially determined, that promote family reunification and reserve the removal of parental guardianship for cases where this is necessary for the child's protection;
- providing the court with restraint powers that enable it to direct that alleged perpetrators of maltreatment leave the home or otherwise refrain from contact with the child, so that the child does not have to be removed from familiar surroundings pending the resolution of protective proceedings; and
- providing that a child capable of giving consent shall do so before a departmental officer can take him or her for a medical examination to corroborate an allegation of maltreatment.

Domestic violence

Federal matters

676. Many women and children require protection from violence or the threat of violence perpetrated by their spouse or father respectively and need assistance from the police and social welfare agencies. The issue of domestic violence has received considerable attention, during the last decade, at both Federal and State levels. In 1986 the Australian Law Reform Commission published a report on the issue which made recommendations for reform. The Office of the Status of Women has also undertaken research and community education, particularly with regard to violence against women. The Australian Institute of Criminology has also done a considerable amount of research on the subject of domestic violence against women and children.

677. As one measure to assist in controlling violence in families, in May 1995, the Federal Government announced an allocation of $2.4 million over four years to address violence in family relationships. There are two components to this measure. First, two pilot programs will be developed within existing Government-funded counselling agencies to trial approaches to dealing with the issue of violence in families. Secondly, training in screening for violence and issues of gender and safety will be implemented for service providers in order that women who seek help can consistently receive a sensitive skilled response.

678. Following agreement between the Federal, State and Territory Governments, the Family Law Reform Bill inserts a new Division into the part of the Family Law Act 1975 dealing with children, which makes special provision for situations of family violence. The new provisions will enable a State or Territory court, when making protective orders, to vary or suspend Family Court orders about contact between a child and another person. In addition, the Family Court will be required to take into account, in determining the child's best interests, any family violence or order to protect a person from family violence, and the need to protect the child from physical or psychological harm that may be caused by being subjected or exposed to, or being affected by another person being subjected or exposed to, abuse, ill-treatment, violence or other behaviour.

State and Territory matters

Australian Capital Territory

679. Victims of domestic violence in the Australian Capital Territory may seek protection under the Domestic Violence Act 1986. Under this Act a person may apply

to the court for a protection order where the respondent has committed or threatened to commit a prescribed domestic violence offence. Interim orders may be made ex parte pending formal hearing of the application. Protection orders can last up to 12 months. Children are able to apply for protection orders themselves. Alternatively, someone can apply on their behalf.

680. An order may prohibit the respondent from being on certain premises, from contacting, harassing, threatening or intimidating the victim personally or through another person, from damaging the victim's property and may cover other related matters. If the person against whom an order is made holds a gun licence the Court may order the seizure of the weapon concerned. Police also have powers relating to search and seizure of weapons when called to the scene of a domestic violence offence.

681. The Australian Capital Territory Community Law Reform Committee is currently reviewing the law in force in the Australian Capital Territory in regard to domestic violence. A Discussion Paper on the subject was published in November 1992 and a Research Paper prepared by the Australian Institute of Criminology was published in March 1993. Community consultation has occurred and the Committee is in the process of formulating recommendations for reform. Issues being addressed include the duration of orders, arrest and court procedures, collection of statistics, preventive detention or refusal of bail to violent offenders, cancellation of custody and access orders in favour of violent offenders, specialist training for those involved in the court process and the use of behavioural change programs as sentencing options. A final report is expected to be released in the near future.

New South Wales

682. In 1983 the New South Wales Crimes (Domestic Violence) Amendment Act was introduced with the aim of assisting the community to recognise that domestic assault is a criminal offence and to make the police and courts more effective in dealing with the problem. The legislation has since been amended to expand the protection offered to victims of domestic violence and to reflect the community's growing abhorrence of violence within families. In brief, the legislation now provides that:

- protection orders may be sought by any victim above the age of 16 years or by police on behalf of the victim. A complaint for an order must be made by police where the victim is under 16 years of age;
- telephone interim protection orders are available outside normal court hours;
- stalking and intimidation are now a standard prohibition under protection orders;

- stalking and intimidation are also a separate offence attracting a maximum penalty of two years imprisonment or $5,000 or both;
- the penalty for breaches of protection orders is two years imprisonment or a $5,000 fine or both;
- where the breach of a protection order involves a violent act, unless the court otherwise orders, the person must be sentenced to a term of imprisonment. Where the court determines not to impose a sentence of imprisonment, it must give reasons for not doing so; and
- in certain circumstances, there is an exception from the presumption in favour of bail where a protection order is contravened by an act of violence or where a domestic violence offence has been committed.

Northern Territory

683. In the Northern Territory an application for a restraining order may be made under the Domestic Violence Act 1992. An application may be made by a spouse against whom violence is likely to be directed or by a member of the police force. The Court may make an order if it is satisfied that the defendant has assaulted or caused personal injury to his or her spouse, threatened to assault or cause personal injury to his or her spouse, damaged or threatened to damage property in the possession of his or her spouse, or acted in an offensive or provocative manner towards his or her spouse, including behaviour that may cause another person to reasonably fear violence or harassment. The Court may impose such restraints as it considers necessary to prevent the defendant from acting in the apprehended manner including some specified positive orders, for example, the return of personal property. Breach of an order is an offence, the penalty being a $2,000 fine or imprisonment for six months. For a third or subsequent breach, imprisonment is mandatory, the term being not less than seven days nor more than six months.

684. When the Domestic Violence Act 1992 commenced, the protection of a restraining order was available to the spouse of the perpetrator. Spouse is defined to include a de facto spouse according to Aboriginal and Torres Strait Islander tradition. The Domestic Violence Amendment Act 1994 (which commenced on 1 May 1995) extends the protection under the Act to family members and others falling within a domestic relationship, including boyfriend and girlfriend relationships.

Queensland

685. The Domestic Violence (Family Protection) Act 1989 provides for the protection of persons and their relatives against violence committed or threatened by a spouse and for the prevention of behaviour disruptive to family life. Under that Act, a spouse (which includes a de facto spouse) or a police officer can apply for a protection order.

The protection order can protect the spouse, a relative (including a child) or associate of the spouse. A protection order is made by a court. A protection order usually lasts for up to two years, but can be made for a longer period.

South Australia

686. Under the Domestic Violence Act 1994 and the Summary Procedure Act 1923 applications can be made by persons (including children or persons on their behalf) who fear violence, property damage or harassment. The orders that the Court can make are similar to those in the other States. The Courts must give priority to domestic violence order applications. In 1994 the Criminal Law Consolidation Act 1936 was amended to make stalking an offence.

Tasmania

687. In Tasmania the Justices Act 1959 was amended in 1985 to provide for the issue of domestic restraint orders. These are designed as an adjunct to the existing criminal law, and to provide immediate protection for persons suffering domestic violence. The Justices Act has been amended a number of times since 1985 to improve the protection provided by restraint orders, to clarify and strengthen police powers of intervention in domestic violence situations, and to simplify restraint order application procedures.

688. The Justices Act also contains provisions to revoke gun licences in restraint order proceedings involving violence and to prohibit persons subjected to restraint orders from obtaining gun licences. Restraint or protection orders made interstate can now be registered and enforced in Tasmania.

Victoria

689. In 1985, the Women's Policy Co-ordination Unit of the Victorian Department of Premier and Cabinet produced a report in 1985 on criminal assault in the home. The report made a number of recommendations for legislative change to meet the problem of domestic violence. The Crimes (Family Violence) Act was subsequently passed in 1987.

Western Australia

690. In Western Australia an application for an order to keep the peace (ie a restraining order) may be made under the Justices Act 1902. This was inserted in 1982 under the heading 'Orders to keep the peace'. Currently orders to deal with nuisance matters and orders relating to protection from violence are governed by this

legislation. A court may grant a restraining order if satisfied on the balance of probabilities that a defendant has caused or threatened to cause personal injury or damage to property, or behaved in a provocative or offensive manner as may lead to a breach of the peace.

691. An application may be made by a police officer or by a person against whom the behaviour is directed. If the person is an infant the application may be made by a person acting on the infant's behalf. Before making an order justices are required to consider the effect of making or declining to make the order on any children of, or in the care of, the persons affected by the proceedings. The penalties for breach of a restraining order were increased in 1994 to imprisonment for 18 months or a fine of $6,000.

692. A new offence of stalking has been introduced in the Criminal Code. The maximum penalty for stalking is eight years' imprisonment. Amendments to the Bail Act in 1994 resulted in a presumption against bail being granted to a person who has been charged with serious offence such as stalking or breach of an order to keep the peace.

693. Commencing in February 1995, the Western Australian Ministry for Justice undertook a review of all aspects of State legislation and procedures relating to restraining orders. The review reported to the State Attorney-General in July 1995 and proposed changes to simplify the process of applying for restraining orders and to increase their effectiveness, in particular as a response to family and domestic violence. Arising from the review, legislation is being drafted to, among other things: distinguish between 'Protection Orders' relating to protection from violence and 'Nuisance Restraining Orders' relating to damage to property or disorderly conduct; enable seizure of firearms where a 'Protection Order' is made against a person; provide for applications for 'Protection Orders' to be made by telephone; and secure the involvement of a 'responsible adult' in restraining order proceedings involving juveniles. Planned procedural changes will: facilitate policy development through better data collection; improve awareness through programs for judicial officers, police, court staff, and others involved in the restraining order process; and improve support for victims of family and domestic violence.

694. The Attorney General is coordinating the government's Domestic and Family Violence Policy. An interdepartmental Task Force has been established to develop a comprehensive family and domestic violence action plan.

695. A special Domestic Violence Unit has also been established at Legal Aid.

(j) Periodic review of placement (Article 25)

Article 25

> ***States Parties recognise the right of a child who has been placed by the competent authorities for the purpose of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.***

Australian Capital Territory

696. Family Services Branch programs are clearly defined and co-ordinated, and each client's case will be monitored and reviewed at regular intervals, whether the client is the subject of a court order or of the intervention of the Branch. Review dates may be determined by the Courts, especially with respect to juvenile justice orders. The court may also order a report as part of any proceedings in respect of a child (Children's Services Act 1986 s162(1)).

697. In the Australian Capital Territory the Office of the Community Advocate monitors all orders in respect of children in need of care (providing its own view to the court in respect of children in need of care proceedings) and requests reports, meetings or conferences as directed by the courts or at its own initiative. The Children's Services Act 1986 stipulates a compulsory periodic review of orders within every 12 months for each court order. The court may also review its orders at any time, on application by the Community Advocate or any other person.

698. Family Services Branch policy and practice ensure that case reviews evaluate the necessity for the continued intervention of the State in the life of a child and whether current intervention meets case plan objectives. Case plan documentation may be given to the child, the parents, the care-giver, and all persons responsible for implementing support for the child in the case plan.

New South Wales

699. Administrative procedures and legislative provisions administered by the Department of Community Services and the Health Department ensure that periodic reviews occur in accordance with Article 25. The legislative provisions relating to periodic review are found in the following Acts:

- Children (Care and Protection) Act 1987
    - Licensing of residential care centre;

  - Review by court;
  - Review by Community Welfare Appeals Tribunal; and
  - Children's Board of Review.
- Community Services (Complaints, Appeals and Monitoring) Act 1993
  - Community Visitors;
  - Community Services Commission; and
  - Appeals Tribunal.
- Mental Health Act 1990.

Northern Territory

700. The Community Welfare Act 1983 requires that, where there is a court order regarding placement of the child, the Court must review the placement periodically. The frequency of the review depends on the length of the order. The Minister also has a duty to review the placement every three months, regardless of the length of the order.

701. There are also provisions in the Act for variation or appeal of the placement order. Those variations or appeals can take place as a result of a review or at any time in the placement period.

702. Principle 16 in the Principles of Substitute Care provides that children and their cases will be under constant review while the children are placed in substitute care.

Queensland

703. The Department of Family Services and Aboriginal and Islander Affairs has minimum standards in relation to review of placements. These standards state that each case must be reviewed by departmental officers at a minimum of every four months until the child is safely united with family or in a planned permanent placement.

704. Children in alternative residential care with Intellectual Disability Services are placed voluntarily at the request of their parent/guardian, rather than through the exercise of statutory power to separate the child from the family. It is the policy of the Government that every client have an individual plan for future care, training and lifestyle development, including accommodation and placement. This plan must be reviewed annually.

South Australia

705. One of the functions of the family care meetings convened under the Children's Protection Act 1993 is to review arrangements made for securing the care and protection of a child. A family care meeting must make provision for the review of those arrangements and a Care and Protection Co-ordinator must convene a meeting in accordance with those arrangements. A Co-ordinator must also convene a family care meeting when requested to do so by two members of the child's family and may convene a meeting at a time he or she thinks necessary. Where the Court places a child under the guardianship of the Minister until the child attains 18 years, a review of the circumstances of the child must be carried out at least once in each year that the child remains subject to the order.

706. For children who are in foster care the Community Welfare Act 1973 provides for the Director General to satisfy himself as to the welfare of all children in the custody of approved foster parents and to review at regular intervals the circumstances of each foster child and the possibility of the child being returned to its own family. The Department's policy with regard to all children in substitute care, including placements in emergency foster care, respite, residential, relative and foster care specifies reviews at three, six, 12 and 18 month intervals and after that annually.

Tasmania

707. There is no legislative requirement for review of placement in the Child Welfare Act 1960. However, Service Co-ordination Guidelines establish a policy requirement that service co-ordination plans be developed in consultation with children and their families and that plans are monitored and reviewed annually. Reviews should coincide with the agreed frequency which is part of the plan, or with significant changes to circumstances.

Victoria

708. In Victoria the Children and Young Persons Act 1989 makes provision for a review of the extensions of protection orders by the Children's Court. The Act provides that court orders granting custody or guardianship of a child to the Director-General of Community Services or to a third party must be for a period of no more than 12 months (or 24 months in some cases), with review thereafter if a new order is to be made.

709. Under the Mental Health Act 1986 a person who has been detained as an involuntary patient or a security patient has the right to apply to the Mental Health

Review Board for review of that decision. An appeal may be made by the patient at any time or by a person who satisfies the Board of a genuine concern for the welfare of the patient. It is also the function of the Board to periodically review the detention of each involuntary patient and security patient. The continued detention of an involuntary patient or security patient must be reviewed between four and six weeks after admission and thereafter at intervals not exceeding 12 months. The Act also provides that, on admission to a psychiatric in-patient service, every patient must be given a prescribed statement setting out his or her legal rights, including the right to have a second psychiatric opinion and to obtain legal representation.

Western Australia

710. The Department for Community Development ensures regular review of children under its care through policy directives. The Child Welfare Act 1947 also requires that wards be visited at least every six months. Departmental Case Conference Guidelines and Administrative Instruction 456 provide details of planning and review requirements. Where possible, placements are pre-planned at a case conference that involves all relevant parties, including the child's family. The child's views are also sought and considered. If placement cannot be pre-planned there is a requirement that a plan be developed within five working days of the child coming into care.

711. Regular case reviews are held on children in care and a full case conference occurs annually or whenever a change in placement is contemplated. The movement of all children in care can only occur as a result of a formal case plan. Planning review for children in care is considered to be essential and the Legislative Review has proposed that new legislation contain an obligation on the Director General to provide this for children under care and protection orders.

F. BASIC HEALTH AND WELFARE

(a) Survival and development (Article 6, paragraph 2)

Article 6

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Injury Prevention and Control

712. Australia's National Goals, Targets and Strategies for Better Health Outcomes into the Next Century, released by the Federal Government in September 1994 identified injury prevention and control as one of the four priority areas for action.

713. Injury is a leading cause of death in Australia and accounts for 6.1 per cent of all deaths. About 50 per cent of child deaths are due to injury. See Table F1.

714. The Department of Human Services and Health has funded the Child Accident Prevention Foundation of Australia (Kidsafe) to lead and coordinate national action to reduce injury in areas where children are identified as the target group in the National Health Goals, Targets and Strategies for Injury Prevention and Control. Specific projects will cover:

- poisoning (action to extend the use and effectiveness of child resistant closures);
- burns and scalds (action to regulate for the instillation of smoke detectors and to reduce tap hot water temperature in bathrooms);
- falls associated with playgrounds, nursery furniture (review and adoption of new Standards) and babywalkers (action and education to reduce their sale and use);
- drowning - domestic pools (action to extend pool fencing legislation) and baths (carer safety education); and
- transport-related injury (extension of the availability and use of child restraints in motor vehicles).

Food, nutrition and infant health

Federal matters

715. In response to the World Declaration on the Survival, Protection and Development of Children, Australia's National Program of Action addresses the issue

of improving children's nutrition. The two key strategies at the national level that have an impact on the nutrition status of children are the implementation of the National Food and Nutrition Policy for Australia and the promotion of breastfeeding.

716. The National Food and Nutrition Policy was issued in September 1992. A major project being undertaken is to develop national nutrition education curriculum material for schools, supported by professional development for teachers. The aim of the project is for school students to develop health-promoting behaviour in relation to nutrition.

717. With regard to breastfeeding, relevant activities include:

- implementation of the World Health Organisation International Code of Marketing of Breast-milk substitutes. During 1995 the National Health and Medical Research Council will be developing guidelines for health workers to support the World Health Organisation code;
- promotion of breast feeding through inclusion in the Dietary Guidelines for Australians of the particular guideline Encouraging and Supporting Breastfeeding and other activities. Separate dietary guidelines for children and adolescents were endorsed by the National Health and Medical Research Council in June 1995. The guidelines are in priority order with 'encouraging and supporting breastfeeding' being number one; and
- initiatives of the Infant Nutrition Panel which was established by the National Health and Medical Research Council.

718. The National Food and Nutrition Policy identified certain groups in the Australian community which have poor levels of nutrition. These groups include Aboriginal and Torres Strait Islanders who experience a range of nutrition-related problems, including malnutrition.

Aboriginal and Torres Strait Islander children

719. In Australia's National Program of Action it was acknowledged that Aboriginal and Torres Strait Islander peoples have the worst health and infant mortality of any identifiable group in Australia, and that the health of their children is significantly worse than that of other Australian children.

720. The fact that Aboriginal death rates are much higher than for the rest of the population means that the Aboriginal population is relatively young when compared with the non-Aboriginal population. At the 1991 Census the total Aboriginal and Torres Strait Islander population was 265,459, almost 40 per cent of whom were children aged less than 15 years in comparison with 22 per cent of the total Australian population. Similarly, 15 per cent of Aboriginal children were aged less than five years compared with seven per cent of the total population. Only 28 per cent of

Aboriginal peoples live in capital cities with easy access to all mainstream health services. One in five reside in remote rural settings, away from cities with basic heath facilities.

721. Aboriginal mothers tend to have babies at a younger age than other mothers. In 1991, more than a quarter of Aboriginal mothers were in their teens. Despite their comparatively young age, higher parity was common in Aboriginal mothers; more than 26 per cent had at least three previous confinements compared with 9.9 per cent of all mothers. Deaths directly attributable to obstetric complications were disproportionately high in Aboriginal mothers. While the number of maternal deaths in Australia has decreased by almost two-thirds since 1970-72 the proportion of Aboriginal women has actually increased. In 1988 Aboriginal mothers accounted for almost 30 per cent of all maternal deaths but less than three per cent of all confinements.

722. The National Aboriginal Health Strategy recommends a number of strategies to reduce the maternal-mortality rate, including ensuring that culturally acceptable antenatal care and education are available, encouraging and facilitating hospital delivery, and providing adequate resources for appropriate health services, particularly in poorly-serviced areas.

723. The strongest predictor of low child-survival rates was large family size. While there has been a decline in the average number of children born to Aboriginal women of child bearing age during 1986-91 the average number of children born to Aboriginal women of child bearing age was about 40 per cent higher than the equivalent figure for non-Aboriginal women (3.1 versus 1.9 children). Various strategies are being implemented to address this issue. For example, Aboriginal health workers now receive training in family planning. See Table F2 for comparative Aboriginal and non-Aboriginals data.

724. In 1991, a total of 7,027 babies born to Aboriginal mothers were identified (2.9 per cent) of all confinements. Areas with the largest number of births were Queensland (2,148), Western Australia (1,460), New South Wales (1,385) and the Northern Territory (1,209).

725. Health issues for adolescent mothers which are likely to impact on the well being of their babies include the incidence of anaemia and to a lesser extent, diabetes and renal problems, alcohol consumption, smoking, poor nutrition, poor general health and inadequate antenatal care.

726. Low birth weight, which is associated with a higher infant mortality rate, is higher among Aboriginal and Torres Strait Islanders infants. In 1991, 13 per cent of Aboriginal babies had low birthweight (less than 2,500 grams), compared with 6.3 per cent of all births. Low birthweight occurred more commonly among Aboriginal babies in the Northern Territory (15.2 per cent) and Western Australia (14.9 per cent) than in other States and Territories. The proportion of stillbirths and neonatal deaths was much higher in Aboriginal babies born in Western Australia than in Aboriginal babies born in other States and Territories. Pre-term birth, maternal nutrition and other factors contribute to the skewed distribution of Aboriginal birthweights.

727. Despite significant declines over the past two to three decades, Aboriginal infant mortality rate remains typically two to three times those of non-Aboriginal infants. The infant mortality rate for Aboriginal infants was 24.6/1000 live births in 1988, approximately three times greater than the 8.3/1000 live births for the total population. See Tables F3 and F4. In 1993, Aboriginal babies accounted for 73 per cent of all infant deaths, but only 38 per cent of all births, in the Northern Territory. A similarly high differential was noted in South Australia, where Aboriginal babies represented three per cent of all births, while the proportion of Aboriginal infant deaths was nine per cent.

728. In summary, the risk factors associated with higher infant mortality rates are:

- a lack of education about the potential benefits of antenatal care and inadequate antenatal care;
- a high proportion of Aboriginal mothers in their teenage years;
- a higher proportion of pre-term births; and
- a higher population of babies of low birth weights.

729. The most commonly used indicator of a population's health is life expectancy at birth, that is the number of years a newborn would be expected to live given the prevailing mortality rates. Improvements in Aboriginal life expectancy over the past two decades have been achieved mainly through reduction in infant mortality, however, the expectation of life at birth is still much lower for Aboriginal people than for other Australians. In 1990-92 the average life expectancy of a newborn Aboriginal boy was, depending on where he lived, up to 18.2 years shorter than his non-Aboriginal counterpart. While improvements have been made in infant mortality the high death rates in older age brackets continue to keep Aboriginal life expectancies substantially lower than those for non-Aboriginal people.

730. Lower Aboriginal life expectancy results from consistently higher death rates at all ages, typically two to eight fold in comparison with non-Aboriginal rates. The age-related mortality patterns of Aboriginal people and non-Aboriginal people are in general the same - a significant decline in death rates post-infancy followed by a continuous increase in later years. Aboriginal death rates start rising early, leading to a high differential by the age of 25 years. In 1990-92, the standardised mortality ratio for Aboriginal males was 2.8; the ratio for Aboriginal females was slightly higher at 3.3. In the Northern Territory, the respective standardised mortality rates were 3.3. and 4.2. The causes of infant death, common health problems and rates of hospitalisation are discussed under Part F(c) Basic health and welfare, health and health services below.

731. The Federal Government funds a range of programs which give priority to the needs of indigenous women. They include the National Women's Health Program, the Alternative Birthing Services program, 'Well Women, Healthy Families'. Family Planning and programs for the early detection of breast and cervical cancer. Several States and Territories are also addressing the issue of Aboriginal birthing services. In some cases, facilities are provided specifically for Aboriginal women. Breastfeeding has also been encouraged and has been most successful in instances where Aboriginal or Torres Strait Islander women have been trained as breastfeeding outreach workers, because they have been accepted by the women they aimed to support.

State and Territory matters

New South Wales

732. The New South Wales Government, through Aboriginal Health Programs, targets Aboriginal nutrition in the areas of education, intersectoral activities, improving the health environment and community development. In addition, in rural/remote areas the New South Wales Government is targeting immunisation, nutrition, early intervention for disabilities, home visiting programs and antenatal care.

Northern Territory

733. Strategies adopted in Northern Territory include the following:

- the provision of well-baby clinics for growth promotion and health-educational programs for mothers and other family members;
- social support and counselling for families with malnourished children and the use of monitoring charts;
- encouraging the use of traditional caring and support processes; and

- a rural good-food program to improve rural food supply through education and training of rural store workers, and establishment of local food and nutrition policies.

734. The Northern Territory has reviewed all birthing services, paying particular attention to the needs of Aboriginal and Torres Strait Islander women. A research and development project, called Strong Women, Strong Babies, Strong Culture, funded by the National Food and Nutrition Program as part of the National Food and Nutrition Policy, is also being conducted in the Northern Territory.

735. This project aims to develop primary health care nutrition strategies for and in consultation with Aboriginal women, their traditional advisers and health professionals. It aims to develop bi-cultural approaches to antenatal care specifically to improve maternal nutrition and reduce infection during pregnancy, and thus to improve birth outcomes.

Queensland

736. In Queensland, food and nutrition issues of Aboriginal and Torres Strait Islander children are addressed through a network of Aboriginal health teams, which include Aboriginal health workers and nurses, regional and sector dietitians, community-health workers and child-health centres. Other initiatives include:

- well-baby clinics, involving Aboriginal health teams and child or community-health centres;
- pre-service and in-service training of Aboriginal health workers, Aboriginal health-promotion officers, Aboriginal community-health workers and community-nutrition workers; and
- development of a nationally accredited community-nutrition program for Aboriginal peoples.

South Australia

737. A research project has been funded to develop models to improve food and nutrition in rural and remote communities using community development approaches.

Victoria

738. In May 1994, Victoria launched the Victorian Breastfeeding Guidelines in recognition of the need to develop a uniform approach to encouraging and promoting breastfeeding in Victoria. The guidelines were developed by health professionals in consultation with consumers and the Nursing Mothers' Association of Australia, and are based on breastfeeding protocols used at the Royal Women's Hospital. The guidelines will be reviewed in the latter half of 1995.

739. Victoria supports the continuation of the distribution of free infant formula to families experiencing financial difficulty via present mechanisms as any alteration to this process could disadvantage children in need.

740. Whilst Victoria supports the distribution of free infant formula to needy families, it also actively promotes breastfeeding.

741. The Food and Nutrition Program targets school aged children, providing education programs on nutrition through work with school canteens. The Victorian Aboriginal Health Service Co-operative Service Ltd provides a program for women and children which aims to develop adequate nutrition and encourage lifestyle changes. The emphasis is on the development of traditional lifestyles realistically adapted to current circumstances. Additionally, a clinic program for under five-year-olds, which includes a paediatric referral service and a hospital and home-visiting service, also emphasises nutrition.

Western Australia

742. Health Promotion Services has developed a nutrition education and promotion resource manual for Aboriginal health worker use, as part of the Nutrition Program. The training program enables Aboriginal health workers to take back to their communities, knowledge and skills on many aspects of infant and child nutrition. The Program also includes health promotion materials, a community stores project and an Aboriginal Market Basket study. The Health Department is developing nutrition policies to help improve the nutritional status in the Aboriginal community and to reduce the serious impact of nutrition-related diseases such as obesity, diabetes and heart disease.

Consumer protection

Federal matters

743. Consumer protection legislation in Australia is concerned with the physical well-being of children. For example, under the Federal Trade Practices Act 1974, either the Attorney-General or the Minister for Consumer Affairs has the power to declare mandatory consumer product safety and information standards, to recall hazardous goods and to ban unsafe goods. Wherever possible standards developed by the Standards Association of Australia are used as the basis for mandatory standards declared under the Trade Practices Act 1974.

744. Amongst the mandatory safety and information standards declared, there have been a number in the field of child related products: flammability requirements for children's night garments, child restraining devices for use in motor vehicles, reflectors for bicycles, toys for children under three years old, flotation toys and swimming aids. Certain products such as bean bags, which may be harmful to children and which are used by adults, are also subject to safety standards. During 1993-94 activities of the Federal Bureau of Consumer Affairs of particular relevance to children included:

- negotiations with the Australian manufacturers and importers of babies' bottles and teats for the development of a voluntary code of conduct applying to the marketing of these products;
- preparation of a discussion paper on advertising affecting children;
- revision and updating of mandatory consumer product safety standards for products such as toys; and
- involvement in the development and revision of the Australian Standards for children's cots, bunk beds and infant rocking cradles.

745. The Bureau launched the first stage of the National Primary School Consumer Education Project on World Consumer Rights Day, 15 March 1994.

State and Territory matters

Queensland

746. In the interests of consumer protection a range of regulations in relation to packaging and labelling are in force in Queensland to protect children from the ill effects of accidental ingestion of drugs and poisons. The recommendations of the National Health and Medical Research Council as outlined in the Standards for the Uniform Scheduling of Drugs and Poisons (SUSDP) have been adopted by this State. The SUSDP states that containers of a range of cleaning agents should have child resistant closures. The Poisons Regulations of 1973 also control packaging and labelling of potentially harmful substances to children. Segments within the health education curriculum deal with labelling and packaging and the misuse of drugs.

747. The provisions of the Poisons Regulations prohibit the storage of a dangerous drug, restricted drug or poison within the reach of children. Part C prohibits the display of poisons within the reach of children in shops. S2 and S3 drugs in pharmacies must be displayed behind the counter of the shop out of the reach of children. S7 poisons, including agricultural chemicals, must be stored in a locked area.

748. In order to prevent developmental delay and illness in children due to heavy metal ingestion, the Health Act 1937 prohibits the sale of cooking utensils or appliances containing lead or arsenic. The Act also prohibits the sale or manufacture of toys or food containers containing lead, and other heavy metals such as arsenic, antimony, cadmium, selenium or mercury. The Act prohibits the use of lead in paint and the use of leaded material in certain building materials and water pipes.

(b) Disabled children (Article 23)

Article 23

1. ***States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.***

2. ***States Parties recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.***

3. ***Recognising the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present Article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.***

4. ***States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.***

Federal matters

Disability Discrimination Act

749. The substantive provisions of the Federal Disability Discrimination Act 1992 became effective on 1 March 1993. These provisions prohibit discrimination on the ground of disability in the areas of work, education, access to premises, accommodation, land, clubs and incorporated associations, sport, administration of Federal laws and programs, and requests for information. The Act also prohibits harassment of a person with a disability. People who believe that they have been discriminated against on the ground of disability are now able to make an inquiry or lodge a complaint with the Disability Discrimination Commissioner. Children (or, where appropriate, their parents or guardians) may also make inquiries or complaints. Enquiries into complaints of disability discrimination are conducted by the Human Rights and Equal Opportunity Commission. The Federal Government has also established a network of legal advocates to assist people to enforce their rights under the Act.

750. The Disability Discrimination Act 1992 also makes provision for the formulation by the Attorney-General of disability standards in respect of the employment, education, accommodation and the provision of public transport services for a person with a disability and the administration of Federal laws and programs.

Programs for People with a Disability

751. The introduction of the Disability Services Act in 1986 represented an historic step towards addressing long standing barriers facing Australians with a disability. The Act provides a framework for developing a range of support services designed to increase individual independence and integration by all people with a disability, including children, in community life. The Principles and Objectives which underpin the Act reflect a recognition of the need for forms of assistance for people with a disability which are integrated with mainstream services.

752. Under the Disability Services Act 1986 the Minister may approve grants of financial assistance to eligible organisations to enable the provision of a range of services to people with disabilities. Such organisations are required to promote the Principles and Objectives under the Act. The Principles ensure equality of rights for people with disabilities in Australian society, while the Objectives define the manner of service delivery to ensure positive outcomes for the users of services. The Principles and Objectives are generally consistent with the provisions of the Convention.

753. In signing the Federal-State Disability Agreement in 1992, each State and Territory agreed to introduce complementary legislation to the Disability Services Act 1986, ensuring a national framework for the rights of people with a disability in the delivery of State programs and services. Under this Agreement, responsibility for accommodation services, some of which cater for children, has been transferred to the State and Territory Governments, while employment services, which cater to adolescents and adults, are a Federal responsibility.

754. In 1991 the Federal Government also introduced the Disability Reform Package, an integrated system of payments and support for people with disabilities which links disability support pension recipients with appropriate vocational training, rehabilitation and employment placement services.

755. One emphasis of the Disability Task Force, a cross-departmental working group looking to improve opportunities for people with disabilities, has been on youth and on ensuring that adequate assistance and support is provided to young people with disabilities in their progress to adulthood and independence, including further education, training and work. Young people with disabilities who are making the transition from school to work were a priority group for access to 4,000 new employment places established between 1991-94 under the Disability Reform Package. The aim of the package is to improve the access of people with disabilities to employment in the open labour market by offering them a fast track to rehabilitation, training and employment-support assistance.

756. A recent initiative is the Commonwealth Disability Strategy. Under the Commonwealth Disability Strategy, children are considered to be an additionally disadvantaged group. This means that Federal Departments and agencies will be expected to provide specific information about the progress of activities to address children with a disability's needs.

Commonwealth Rehabilitation Service

757. The Commonwealth Rehabilitation Service (CRS) provides vocational rehabilitation programs to people with disabilities through an Australia-wide network of over 170 locations. Programs assist individuals with work and independent-living goals to maximise their opportunities for participation and integration into the community.

758. Children aged 14 years or more, including school children, are eligible to be considered for assistance by the CRS. Vocational rehabilitation programs are used to

assist children with disabilities in the transition from school to work and the wider community.

Home and Community Care Program

759. The joint Federal and State Governments' Home and Community Care Program (HACC) enhances the quality of life of young people with disabilities within the community by:

- providing a comprehensive and integrated range of basic support services for frail aged and younger people with disabilities, and their carers; and
- helping people to be more independent at home and in the community, thereby preventing their inappropriate admission to long term residential care.

760. The types of service available through HACC are:

- home help or personal care;
- community nursing;
- food services;
- community transport;
- home maintenance or modification;
- respite care;
- day care centres;
- community options; and
- allied health services.

Hearing Services Program

761. The Federal Government's Hearing Services Program provides services to all Australian children (under 21 years of age) with a hearing disability. In a typical year the program tests over 21,500 children for hearing loss, and over 600 of these are fitted with hearing devices. All major services are provided free of charge. These cover assessment of hearing loss, ear, nose and throat consultations, fitting of an appropriate hearing aid/device, and counselling for children and carers on communication for the hearing impaired. A nominal annual charge covers the repair and maintenance of hearing aids/devices and the supply of batteries. This charge is waived for the children of social security beneficiaries.

762. The Hearing Services Program aims to deliver culturally sensitive hearing rehabilitation programs to the children of indigenous Australians. To this end the

Program conducts, in collaboration with public health and education agencies, assessment and rehabilitation activities in urban and remote areas of all States. The majority of these are school-based programs. Existing management information systems do not provide accurate statistical information on the number of Aboriginal and Torres Strait Islander children currently receiving services from the Program.

Children's services (child care)

763. Children with disabilities are generally well represented in community based long day care centres, being 3.2 per cent of current users (1993 Child Care Census) as compared with 4.4 per cent of the total population in the zero to four age group (Australian Bureau of Statistics Survey of Disability and Ageing, 1993).

764. Assistance is available to support children with additional needs in all federally-funded child care service types, including community-based and private Long Day Care Centres, Occasional Care, Family Day Care and Outside School Hours Care. There are three programs of specific assistance: Supplementary Services Funding; Disabled Supplementary Grants; and Special Services Program Funding.

765. Supplementary Services assistance is provided under the Federal Government's Children's Services Program to assist children with special or additional needs to gain access to, and appropriate care in, mainstream child care services. The priority groups for these services include children with a disability. The Federal Government in the 1995-96 Budget has increased support for children with additional needs through the provision of additional funding of $17.2 million over four years to expand the Supplementary Services Program (SUPS).

766. In addition, Disabled Supplementary Services Grants are available to family day care units for children with a disability. The grants are a regular payment in recognition of the additional care and attention that children with a disability require. They are designed to ensure that fees charged to families of children with a disability are not higher than those charged to other families.

767. Special Services funding is also provided under the Children's Services Program for a wide range of purposes. The priority groups for assistance under Special Services include children with a disability.

768. Forms of assistance for children with a disability under Special Services Program include:

- Funding of Resource and Advisory agencies whose role includes research into need, training and counselling of child care staff to work with children with special needs, publicity, resource production and community outreach;
- Toy libraries providing special toys and equipment for children with a disability; and
- Disability Children's Service workers, who primarily work within the community raising awareness of the availability of child care for children with a disability or who have disabled parents.

Child Disability Allowance

769. This allowance aims to provide extra financial assistance for families with children with disabilities who require extra care and attention. It seeks to encourage family rather than institutional care.

National Child Protection Council

770. The National Child Protection Council's terms of reference include the special child abuse prevention needs of children with physical disabilities or developmentally delayed children. The plan of action for children with disabilities has been completed and is being considered by the Department of Human Services and Health.

Sterilisation of children

771. In the High Court decision in Secretary, Department of Health and Community Services v JWB and SMB (1992) 175 CLR 218 (referred to as Marion's Case although not her real name) it was held that parents or guardians of disabled children cannot give consent to an operation which sterilises a child in the absence of medical necessity to treat some malfunction or disease. Judicial approval must be obtained unless legislation exists which provides the requisite procedural safeguards protecting the best interests of the child.

772. Following the decision in Marion's Case, the common law in Australia on legal competence to consent to medical procedures on children under 18 years of age can be summarised as follows. In general, children can consent to certain kinds of medical procedures where they are sufficiently mature to make decisions concerning their own medical treatment (under the principle adopted by the House of Lords in Gillick v West Norfolk and Wisbech Area Health Authority [1986] AC 112). Where a child is incapable of giving valid consent to medical treatment, parents or guardians who have the primary responsibility for the child's welfare may in a wide range of circumstances consent to medical treatment of their minor child. In relation to children with disabilities, the High Court stressed in Marion's Case that it cannot be presumed that an intellectually disabled child is, by virtue of his or her disability, incapable of giving

consent to treatment. Instead, each case must be considered by reference to the particular person's capacity and understanding.

773. In the case of sterilisation of children who lack the capacity to consent, however, neither the child nor the child's parents can consent to the procedure. Only a court can do so, unless legislation provides otherwise. The Family Court of Australia is able to authorise such an operation, but is not the only court or decision making body in Australia which can do so.

774. It seems to follow from this view, taking into account the High Court's reasons for requiring the involvement of an outside decision maker in cases involving sterilisation, that even a Gillick-competent child cannot consent to his or her own sterilisation, unless it falls within the exception marked out by the High Court.

775. The one exception made by the High Court is the case of a therapeutic procedure in which sterilisation is an incident of treatment, a by-product of surgery appropriately carried out to treat some malfunction or disease eg surgical removal of the ovaries or testes because of cancer or sterilisation resulting from chemotherapy or radiotherapy.

776. The High Court in Marion's Case noted that legislation could specifically provide for the circumstances in which sterilisation of a person under 18 could be authorised. Two States, New South Wales and South Australia, have legislation dealing with the circumstances in which such procedures may be authorised. In Queensland, the Transplantation and Anatomy Act 1979 states that a person under the age of 18 years cannot consent to the removal of regenerative tissue.

777. In New South Wales, special medical treatment, which includes a medical procedure which is intended, or reasonably likely, to render a child under 16 years of age sterile, requires the consent of the Supreme Court. Before giving its consent, the Children (Care and Protection) Act 1987 requires the court to be satisfied that the treatment is necessary to prevent serious damage to the child's health. In case of emergency, a medical practitioner may carry out special medical treatment without the consent of the court.

778. Where the person is 16 to 17 years of age, she or he may consent to the procedure. If such a person is incapable of giving a valid consent, and the procedure is likely to render the person sterile, only the New South Wales Guardianship Board may authorise the procedure (Guardianship Act 1987).

779. The South Australian Guardianship and Administration Act 1993 contains special provisions for the sterilisation of mentally incapacitated children. Such children cannot be sterilised without an order of the Guardianship Board.

780. The other States and Territories do not have legislation which specifically regulates the sterilisation of children. Marion's Case held that Part VII of the Family Law Act confers a welfare jurisdiction on the Family Court which is similar to the parens patriae jurisdiction of the Supreme Court and which extends to the authorisation of medical procedures, including sterilisation. This was confirmed in P v P, a recent High Court case, (1994) 17 Fam LR 457, at least with respect to children of a marriage. In that case, the High Court held that the Family Law Act 1975 confers on the Family Court the power to make an order authorising a person to carry out, on a child of a marriage, medical treatment in New South Wales that is intended, or is reasonably likely, to have the effect of rendering the child permanently infertile, in circumstances where the carrying out of the treatment would otherwise be contrary to the Guardianship Act 1987 (New South Wales). It now seems clear that the Family Court has power to authorise sterilisations, at least with respect to children of a marriage, in all Australian States and Territories, including New South Wales and South Australia.

781. In November 1994 the Family Law Council issued a report on Sterilisation and Other Medical Procedures on Children. The issue arose because in recent years the courts in Australia had been increasingly called on to make decisions involving medical matters. By far the largest volume of these decisions have involved applications for sterilisation, most commonly involving young women with intellectual disabilities. Among the report's recommendations were the following:

- there should be a new division in the Family Law Act 1975 regulating the sterilisation of young people;
- the legislation should provide that no person under the age of 18 years shall be sterilised unless the procedure is necessary to save life or to prevent serious damage to the person's physical or psychological health; and
- any person under the age of 18 years who is the subject of an application for sterilisation must have independent legal representation in the event of a court hearing.

782. The Standing Committee of Attorneys-General will soon be considering proposals by the Federal Government in response to the Report by the Family Law Council. These proposals for reform will include the development of a consistent national approach to the issue of consent to sterilisation of children.

783. The Western Australian Law Reform Commission released a report (October 1994) Consent to Sterilisation of Minors. This report recognised that the Federal Government would be considering legislative reform and this report will also be considered by the Standing Committee of Attorney-General when the Federal Government's proposals are examined.

State and Territory matters

784. All States and Territories have disabilities legislation and a range of programs for people with disabilities:

Australian Capital Territory:	Discrimination Act 1991
	Disability Services Act 1991
New South Wales:	Anti-Discrimination Act 1977 (provisions relating to impairment commenced in 1982)
	Disability Services Act 1993
	Guardianship Act 1987
	Community Services (Complaints, Appeals and Monitoring) Act 1993
Northern Territory:	Anti-Discrimination Act 1992
Queensland:	Anti-Discrimination Act 1991
	Disability Services Act 1992
South Australia:	Equal Opportunity Act 1984 (commenced March 1986)
Tasmania:	Mental Health Act 1963, only includes people with psychiatric and intellectual disabilities
Victoria:	Equal Opportunity Act 1984
	Intellectually Disabled Person's Services Act 1986
Western Australia:	Equal Opportunity Act 1984 (commenced July 1986)

785. The States and Territories currently operate work experience programs for disabled students, which are subsidised by the Federal Department of Employment, Education and Training. The programs allow students placed in special classes, or receiving special education services, to take part in a maximum of 100 days per year of paid work experience. Employers pay the students the minimum award rate and are subsidised by the Federal Government. The programs enable students with disabilities to participate in a long-term work experience situation to develop both the skills of the workplace and their own self-esteem.

Australian Capital Territory

Health services

786. ACT Health provides grants for a number of groups who provide services to disabled youth:

- The Richmond Fellowship provides supported accommodation for those with mental health conditions;
- Northside Contractors provides casual work for those with a psychiatric disability;
- Medea provides supported accommodation for women who are emotionally or psychiatrically distressed and their children; and
- The Australian Capital Territory Cancer Society provides specific youth support programs.

787. Mental health services are provided to young people by both Government and non-Government agencies. Outpatient services are offered by regional teams based at four Health Centres, and by the Child and Adolescent Unit (CAU) of the Mental Health Branch, which caters for children up to 16 years of age. The CAU also provides a consultative service for the Adolescent Day Unit run by the Department of Community Services. The Australian Capital Territory Health Department provides grants for a number of groups who provide services to disabled youth.

788. At present there are no in-patient mental health services for children in the Australian Capital Territory and those children who need this service are sent interstate. Submissions have been made to have designated beds made available for Child Psychiatry in the new Adolescent ward at Woden Valley Hospital and it is hoped that this proposal will be adopted. Very disturbed children and adolescents are referred to in-patient services in New South Wales. The Australian Capital Territory Department of Health would like to develop a regional service in conjunction with South-East New South Wales.

789. Community nurses offer a schedule of health checks to identify early on any developmental delays or health-related problems. Emphasis is placed on parenting education and parent support through a variety of services including clinics, group work and family care centres.

Education

790. The Australian Capital Territory Department of Education and Training has a commitment to the education of students with disabilities through providing a range of options for placement, which are outlined below. Special School settings provide education for students with disabilities from three years to 20 years of age. Programs centre on the development of functional numeracy and literacy skills, communication, self-esteem, independent living, social and behavioural skills. A range of integration and reverse integration activities in regular schools are negotiated for students when it is considered to be appropriate by the school and parents.

791. In the Australian Capital Territory the following programs are developed for, and directed to, students with special physical, intellectual and emotional needs:

- Supplementary support and the Integration Program provide integration for students with disabilities into regular schools. Support is provided through Special Teachers Assistants, professional development for staff and itinerant teachers.

- Itinerant support is available to enable individual students or groups of students to continue to receive their education in regular settings. Programs include hearing impaired, vision impaired and typing services. The support of a Braille Transcriber may be provided to a blind student where appropriate.

- Early Intervention Services are provided for children with special needs from birth to six years of age. Sensory impaired children receive services from diagnosis. An educational and therapy playgroup services children from the age of 18 months to three years. Early Intervention Units provide a program in regular preschool settings, the Autistic Unit provides a special program for three to six year old children with autism and three special settings have early intervention programs.

- The Hospital School program is provided at Woden Valley Hospital for students from Kindergarten to Year 12 who are short or long term patients in the hospital. A service for students who are chronically ill is provided in the home situation by a voluntary group of student teachers administered by a qualified teacher.

- A Behaviour Management Support program provides a service for students exhibiting significant behaviour problems. The Program has Primary, Secondary and Adolescent Units in addition to an Itinerant Consultancy Service to mainstream schools.

- Special Classes and units located in regular schools provide school based special education programs to eligible students. Students are involved in intensive programs on a full-time or part-time basis with appropriate integration of students into regular classes. Current programs include Junior Assessment Classes, Learning Centres, Combined Junior Assessment/Learning Centres, Communication Disorder Classes and Hearing Impaired Support Units.

- The Aussie Sports program, which involves modified versions of adult sports for children, is offered to all children, regardless of ability. Specialised sports programs are also offered to students at special schools. Students with disabilities participate in the Pacific School Games, which are held every four years.

- LINC (Learning In New Classes Team) provides transition and integration support for students with disabilities moving from a special school to a special class, a special class to a regular class or a special school to a regular class. Support is provided both to the student and to the class teacher on a short term basis of up to 12 months.

New South Wales

792. The New South Wales Department of Community Services administers relevant programs and legislation. This includes the Home and Community Care Program administered in conjunction with the Federal Government, which is subject to national standards, and the Disability Services Act 1993 in accordance with the Commonwealth-State Disability Services Agreement. Both the standards and the agreement set out mechanisms to give effect to the rights of children with disabilities. An Interdepartmental Task Force on Early Intervention was established in 1991 to co-ordinate policy development and service delivery to children with developmental disabilities.

Special Education Services

793. A five-year $80 million Special Education Plan is designed to upgrade Special Education Services in New South Wales schools and Colleges of Technical and Further Education. Now into its third year, many initiatives have already had substantial and demonstrable effects in improving the quality of services provided to students with identified disabilities or learning difficulties. Examples of initiatives include establishing:

- Special Education Support Centres;
- the Reading Recovery Program;
- the Early School Support Program for students with Mild Intellectual Disabilities;
- units for students with severe conduct disorders; and
- special curricula for students with severe disabilities and for students with moderate intellectual disabilities.

Workplace for Disabled Youth

794. The Workplace for Disabled Youth component of the community based Employment/Training (Youth) Program aims to place approximately 300 young people with disabilities into training and employment programs. Funds are provided

to community organisations currently working in the disability services area to employ workplace officers to work individually with young people.

Guardianship Act 1987

795. The Guardianship Act 1987 provides far-reaching recognition of the rights of people with disabilities. Under this Act the Guardianship Board:

- promotes the welfare and interests of persons with disabilities by providing a legal framework for the appointment of a guardian or administrator where the person lacks decision making capability in one or more major life activities;
- enables persons with disabilities to gain greater independence and enhance their prospects to live a normal life in the community;
- protects people with disabilities from abuse, exploitation or neglect; and
- ensures that people are not deprived of necessary medical or dental treatment merely because they lack the capacity to consent to the carrying out of such treatment, and that the treatment is carried out for the purpose only of promoting and maintaining their health and well-being.

Aural Habitation Program

796. An Aural Habitation Program to improve use of residual hearing and to help develop the speech potential of students with hearing disabilities has been produced. Significant enhancements have been made to existing services for students with learning difficulties, behaviour disorders and secondary students with mild intellectual disabilities.

Special health needs

797. The special health needs of young people with disabilities are met through specialised youth services such as the Adolescent Medical Units at Westmead Hospital and the Royal Alexandra Hospital for Children and through public hospitals and community health services.

Northern Territory

798. The objectives of the Northern Territory Government are:

- to ensure that persons with disabilities receive the services necessary to enable them to achieve their maximum potential as members of the community;
- to ensure that services provided to persons with disabilities:
    - further the integration of persons with disabilities in the community and complement services available generally to persons in the community;

  - enable persons with disabilities to achieve outcomes such as increased independence, employment opportunities and integration in the community; and
  - are provided in ways that promote in the community a positive image of persons with disabilities and enhance their self-esteem;

- to ensure that the provision of services takes into account the outcomes to be achieved by persons with disabilities; and
- to encourage innovation in the provision of services for persons with disabilities.

799. The Department of Health and Community Services administers the Aged and Disability Services program which includes both health and community services, and provides a mix of prevention, co-ordination and treatment services, together with a range of grant/funded support services through non-government organisations. Support is provided to frail aged, people with disabilities (including children with disabilities) and their families and carers to assist them to maintain maximum independence and quality of life in their own communities. Services provided through non-government organisations which specifically target children with disabilities include accommodation support, respite care, early intervention, supported access to recreation opportunities and advocacy. Services directly provided by the Department of Health and Community Services include allied health and therapy assessment and treatment services, a specialist behavioural assessment and support unit and an aids and appliances scheme. Children with disabilities also have access to acute medical and other health care services through the public hospital system, community health centres and community care centres. The Home and Community Care Program also targets children with disabilities.

Queensland

800. The objectives of the Queensland Government are:

- to ensure young people with a disability have equal access to the community by overcoming barriers within services and providing specific programs which emphasise abilities and encourage full participation;
- to ensure the rights of disabled people as outlined in the UN Declaration on the Rights of the Disabled Person and the UN Convention on the Rights of the Child;
- to ensure all Government and community services are accessible to disabled people;
- to provide clear principles and objectives for services for disabled young people, with clear mechanisms for dealing with complaints, appeals and for monitoring;
- to consult with young people with disabilities in the design and management of services for disabled young people;
- to ensure disabled young people have fair and equal access to education, training, employment and recreation;

- to implement strategies which promote a positive image of young people with disabilities;
- to ensure young people with disabilities receive accommodation support to enable them to choose independent lifestyles; and
- to ensure families' care-givers have access to adequate support services.

Youth policy

801. The Queensland Government Youth Policy clearly outlines, within its principles and objectives, the Government's commitment to the rights and needs of young people aged 12 to 25 years with a disability and their families. The Government's commitment through the Youth Policy extends to establishing equal, effective and comprehensive rights, including political, legal and industrial rights for all people regardless of income, age, disability, social or ethnic background, gender or sexual orientation. These principles and objectives are commensurate with the goals and objectives of the Queensland Disability Services Act 1992.

Health services

802. Free public hospital services are available for disabled children. Physiotherapy, occupational therapy and speech therapy services are available in the hospitals of major centres. Rehabilitation services for disabled children are also provided by private organisations and the Education Department. Regional health authorities provide hospital or community based services to deal with children with neuro-developmental problems.

Services to people with a disability

803. The Department of Family Services and Aboriginal and Islander Affairs administers the Disability Program, which provides funding and other support to community organisations providing services to people with disabilities. The Disability Services Act 1992 requires that service providers maintain the principles and promote the objectives of the Act in the development and implementation of programs and services for people with disabilities. This applies regardless of the age of the person with the disability or the origin, nature, type and degree of the disability.

804. The Division of Intellectual Disability Services of the Department provides a range of residential and other direct care options for children with intellectual disabilities who fall within the Division's target population, which is:

- people with severe and profound intellectual disabilities;

- children too young for definitive assessment; and
- people with intellectual disabilities who have challenging behaviour.

805. Services are regionalised and provided through five Regional Offices, 11 Intellectual Disability Offices, three area services, three Residential Centres, three community villas and a number of community-based houses. As well as residential care, services include individual service arrangements (which may include substitute care), a range of respite care options, resource and assessment services, counselling, therapy and specialist support. Currently there is no state legislation specific to provision of services by the Division of Intellectual Disability Services. Divisional policy gives priority to services which will prevent admission of children to residential care, and to relocating children out of residential institutions.

806. Children with intellectual disabilities whose parents are unable or unwilling to exercise their guardianship role, or who are at significant risk of harm, may be taken into the care of the Director-General pursuant to the provisions of the Children's Services Act 1965. The Division of Protective Services and Juvenile Justice, under its Protective Services program, administers alternative care arrangements for children under care orders who have been separated from their family. Alternative care options include foster care and licensed residential care.

807. Thus, both Divisions include in their client groups children with intellectual disabilities who are separated from their families. Under both programs, priority is given to providing what special assistance and supports may be needed to maintain the child within the family unit.

Children in remote areas

808. With regard to services for children living in the outback, the Disability Services Act 1992 requires that programs and services should be designed and implemented to meet the needs of people with disabilities who may experience additional disadvantage because:

- they are Aboriginal or Torres Strait Islanders; or
- of their sex, ethnic origin or location.

809. Respite care services in North Queensland and in other rural and remote areas of the State in receipt of funding through the Disability Program of Community Services Development, provide services to both children and adults with disabilities living with their families. The Division of Community Services Development also administers

cross-program funding for rural and remote areas through which families have access to child care and support services for people with disabilities.

810. The Division of Intellectual Disability Services has an outreach service in south-west Queensland and a rural and remote areas co-ordination service in central Queensland. The outreach service has a multi-disciplinary team which visits children and their families in the outback. The co-ordinator of the rural and remote areas service facilitates access to generic community services for families requiring assistance with caring for their children.

South Australia

811. Services for people with disabilities are generally provided by the Health Commission's Disability Services Division and the Education Department. The Crippled Children's Association is the only agency which deals specifically with children. Most other organisations deal with both adults and children. The Disability Services division deals with a number of other organisations including the Intellectual Disability Services Council and head injury organisations. The programs provided for people with disabilities include respite, supported accommodation, and home support (including personal care, nursing and recreational programs). The Education Department provides after school care, transport to and from school and vocational training.

812. There have been no cut backs to any of the above programs and additional funds have been provided through the Commonwealth-State Disability Agreement. Whilst most of the funding is not directed at children, they will also benefit from the increase in funding. A one-off sum of $1.7 million has been provided, with a sum of $2.9 million designated as ongoing funding. Of the ongoing funding, $15,000 has been targeted for the Juvenile Arthritis Support Program. A further $20,000 has been allocated to young people not attending school, who exhibit challenging behaviour.

Tasmania

813. The goal of the Disability Services and Community Support Program within the Department of Community Service is to ensure that people in Tasmania who have physical, sensory, intellectual or psychiatric disabilities have access to the opportunity to meet their individual needs for community living, accommodation, employment, leisure and recreation, community activities, prevention advocacy and community education. Children are included in this goal. No child or person under the age of 21 with a disability is institutionalised. A new State Disability Services Bill has been

introduced into Parliament which extends the State's responsibilities for people with disabilities.

Victoria

814. The document Policy, Practice and Procedures for Early Intervention Services in Victoria outlines the principles which underpin the delivery of services for children with additional needs from birth to school entry, which includes disabilities, in Victoria.

815. The Victorian Government believes that all children have the right to a range of services to help meet their needs for physical, social and emotional well being. The provision of early intervention services to provide programs as early as possible in a child's life is one way Victoria ensures that young children with disabilities can actively participate in their local community services and activities. Early intervention services minimise the impact of development delays and/or specific disabilities on children's development by providing support and interventions that build on their existing development, skills and competencies. The Government currently has a dual role in early intervention, including the non-government sector.

816. Specialist Children's Services Teams were formed in 1994 following the merger of the former Health Department's Allied Health Teams and Community Services and Victoria's Early Intervention Teams. The merger provides a single point of contact for families who have concerns about their child's development or where a child has a developmental disability.

817. Working partnerships between services and families is central to all early intervention activities in Victoria. Family centred practice is based on the belief that specialist services are delivered in the context of the child and the family. Services are responsive to each family's lifestyle, needs and changing circumstances. Strengthening each family's ability to meet their and their child's needs is fundamental to the way services and agencies provide support. Family centred practice includes promoting the rights of children with disabilities and their families to a quality of life as close as possible to the established expectations and experiences of all children and families in the community.

818. The Victorian Government has a strong commitment to the provision of pre-school programs in the year prior to school entry. Support for the inclusion of children with disabilities in these programs is provided through specialist children's services teams, funded early intervention agencies and pre-school field officers. The role of these specialist services includes the provisions of information and support to

general service providers, consultancy, in-service training and direct program assistance. A Curriculum development booklet and video on inclusion, for staff in general children's services was developed and distributed across the state in 1994. Further, a project to develop a co-ordinated system of support in preschool and child care services is being undertaken in 1995.

819. Children with disabilities and their families have access to information, therapy and health care services through a wide range of health services. The Royal Children's Hospital and Monash Medical Centre provide rehabilitation and outpatients services for children with disabilities, as do the paediatric departments of some other major hospitals. Community based therapy and support services are available through Community Health Centres, specialist children's services teams and funded early intervention programs. The provision of home based support through domestic home held and child care has been provided through the Home and Community Care Program. Victoria also provides respite for families of young children with disabilities through community residential units and in-home care linked to adult disability services. Early Choices which is a respite and family support program has been established in 1995. Early Choices is available to meet the needs of families who have children with severe disabilities and high support needs. The program has a strong case management focus and provides flexible models of support in response to children's and families identified needs.

820. The Home and Community Care Program (HACC) offers a wide range of services and supports to families with a disability. HACC services are offered by a range of service providers, predominantly local government, and fees are levied on many of the services offered. The setting of fees is the responsibility of individual service agencies within the framework of HACC policy and guidelines. The over riding principle will remain that nobody be denied service due to an inability to pay.

821. Victoria has provided support to the Australian Early Intervention Association's (Victoria Chapter) 11th Annual conference in 1995. The conference is an important vehicle for promoting dissemination of information concerning research and education in early intervention for practitioners. Specialist Children's Services Unit of Health and Community Services Victoria will be sponsoring research in 1995 to assist the identification of effective programs for children with additional needs and their families. The outcomes of this research will be used to further develop effective early intervention services which are responsive to children and families in Victoria.

Western Australia

822. The Health Department provides a number of services for disabled children and also contributes to services provided by other agencies such as the Authority for Intellectually Handicapped Persons. The State Child Development Centre, Community and Child Health Services Centres, and Princess Margaret Hospital all provide assessment, management and rehabilitation services for disabled children. Health professionals working at Princess Margaret Hospital and the State Child Development Centre contribute to and exchange appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children on an international basis.

Authority for Intellectually Handicapped Persons

823. The Authority for Intellectually Handicapped Persons Act 1985 established the Authority for Intellectually Handicapped Persons in 1986. The Authority is responsible for advancing the welfare of people with an intellectual disability by providing and coordinating appropriate services in cooperation with other Government and non-Government organisations. The Authority is responsible to Parliament through the Minister for Disability Services. The proposed Commission for Disability Services will include the Authority.

824. Irrabeena is the service delivery arm of the Authority and is responsible to the Authority through the Director. As the service arm of the Authority, Irrabeena is responsible for providing services to all registered active clients throughout Western Australia. It provides a comprehensive range of services to people whose needs, as a result of their handicap, cannot be met by other agencies. All children registered with Irrabeena are provided with a range of appropriate services in their preschool years. Services are available to children of school age under the family support program.

Accommodation Services Program

825. The Accommodation Services Program provides a positive home environment for people with an intellectual disability which best meets their individual needs and aspirations. However, the major thrust is to support families to care for children, and the accommodation service is one of last resort.

(c) Health and health services (Article 24)

Article 24

1. *States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.*

2. *States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:*

    (a) *To diminish infant and child mortality;*

    (b) *To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;*

    (c) *To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;*

    (d) *To ensure appropriate pre-natal and post-natal health care for mothers;*

    (e) *To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;*

    (f) *To develop preventive health care, guidance for parents and family planning education and services.*

3. *States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.*

4. *States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realisation of the right recognised in the present Article. In this regard, particular account shall be taken of the needs of developing countries.*

Federal matters

826. Generally speaking the health status of young Australians is high, but evidence shows that there are significant inequalities in health status among children and young people, particularly those from poor and/or dysfunctional families, those living in rural or remote areas and those of Aboriginal or Torres Strait Islander backgrounds. See Table F5 for details of the seven most frequently reported illness conditions by children during 1989 and 1990.

827. There is growing recognition that good health does not happen automatically and that ongoing positive investments are needed to ensure that infants grow into competent, participative members of the community. Australia in recent years has undertaken a series of collaborative Federal/State and Territory initiatives to further the health and well-being of young Australians.

828. National Health Goals and Targets for Australian Children and Young People were produced in 1992 and are now incorporated into service delivery planning in most States and Territories. In 1993 the National Health and Medical Research Council undertook a comprehensive review of Child Health Surveillance and Screening in Australia.

829. A National Health Policy for Children and Young People was endorsed by Federal, State and Territory Health Ministers in June 1995. The Policy identifies key areas where action is needed to maintain and improve the health of children and young people. A national implementation plan is now being drafted to provide a framework for developing cooperative Federal, State and Territory initiatives in health for young Australians.

Medicare

830. Australia has a universal health care scheme known as Medicare. This scheme covers all Australian residents as defined in the legislation (the Health Insurance Act 1973) including children. The Medicare Benefits Schedule contains a number of services which are provided specifically for children. This is in recognition of the special medical needs of the infant or child in that certain procedures are performed only on children, or may be more intricate and time consuming than the equivalent procedure performed on an adult.

831. Recent reforms to Medicare have been designed with a safety net to protect families with chronically ill children or who are otherwise high users of medical services from excessive medical expenses. Under the Medicare safety net, once

patients' contributions to the scheduled cost of Medicare services reach the set threshold in any calendar year, the gap between the benefit and the Schedule fee or the fee charged (whichever is lower) for all subsequent services in that year is paid in full by the Federal Government. From 1 January 1995, the threshold, which applies equally for individuals and families, was $258.30.

832. The Medicare scheme does not generally cover dental services. However, under an initiative implemented by the Government in 1981 special provision is made for young people with cleft lip and cleft palate conditions to receive dental treatment under Medicare.

Pharmaceutical Benefits Scheme

833. For more than 40 years the Pharmaceutical Benefits Scheme (PBS) has helped to make life-saving and disease-preventing medicines available to all Australians, regardless of health, income or age. Children from all social backgrounds have equal access to prescription drugs through the PBS. Children disadvantaged for financial or health reasons are entitled to receive prescription drugs at the concession rate, in accordance with guidelines set out by the Federal Department of Social Security.

National immunisation program

834. As part of the National Program of Action for the Survival, Protection and Development of Children, the national immunisation program seeks to increase the chances of every child's survival and development. It also seeks to ensure every child's right to the highest attainable standard of health. Increasing immunisation rates will diminish infant and child mortality as well as diminishing vaccine-preventable diseases. Infectious diseases such as diphtheria, whooping cough and polio are no longer major causes of death and disability in Australia due to mass immunisation programs.

835. Between 1983 and 1989-90, due to the introduction of a combined measles/mumps vaccination, there was a rise in the proportion of six year olds fully immunised against measles. However, during the same period there was a decline in the proportion fully immunised against whooping cough. Overall the proportion of six year olds fully immunised against diphtheria/tetanus, whooping cough, polio and measles rose from 55 per cent in 1983 to 71 per cent in 1989-90. Including mumps in the analysis reduced the figure to 68.7 per cent. See Table F6.

836. Of children aged six and under, just over half (52.9 per cent) were identified as being fully immunised against all conditions (diphtheria, tetanus, whooping cough,

polio, mumps and measles). A further 29.5 per cent were recorded as being partly immunised and 3.6 per cent are not immunised against any of the conditions and the immunisation status was not known for a further 14.1 per cent. A slightly higher proportion of girls than boys aged six years and older were identified as fully immunised. The proportion of children fully immunised differed between States and Territories from 46.4 per cent in the Northern Territory to 64.3 per cent in the Australian Capital Territory.

837. The only available information on immunisation amongst Aboriginal children is unpublished data from the National Health Survey which shows that the proportion of Aboriginal and Torres Strait Islander children aged zero to six years fully immunised for all conditions was considerable less that the total population at 37 per cent. The number of Aboriginal and Torres Strait Islander people in the survey as a whole was small and consequently the data may not be representative. Data on the health status of Aboriginal and Torres Strait Islander children is discussed below.

838. Recently there has been concern over perceived low levels of immunisation against conditions such as whooping cough and measles in Australia. There have also been reported outbreaks of these diseases in some States. Reported cases of measles rose from 248 in 1988, when the disease was declared notifiable to 4,461 in 1993. In addition there were 153 cases of whooping cough in 1988 compared to 3,956 in 1993. However, deaths from these two conditions remain low with 18 deaths due to measles and six due to whooping cough in the period 1988-92.

839. UNICEF has set a target for measles immunisation at 80 per cent of one year olds immunised against measles by 1990 and 90 per cent by the year 2000. In the Progress of Nations report released by UNICEF in 1991, Australia was ranked 26th among industrialised nations in terms of measles immunisation of children aged one year old with 68 per cent of one year olds immunised against measles. The National Health Survey found that in 1989-90, 67 per cent of one year olds were fully immunised against measles compared to 92 per cent of two year olds. The low level of immunisation of one year olds reflects the later administration of the measles vaccine rather than a failure to immunise.

840. In the 1995-96 budget the Government announced that it would be addressing the fall in immunisation rates among children with the national immunisation program being given an extra $24 million over two years.

841. Some of the responses to the problem of poor health in Aboriginal and Torres Strait Islander children and the lower levels of immunisation include:

- provision by the Aboriginal Health Services Cooperative of an immunisation program to *Aboriginal communities;*
- free vaccination against Haemophilus Influenza type b(Hib) for all children under five years, including special arrangements to ensure that indigenous children are protected;
- strategies to improve water quality, sanitation and housing; and
- the development of a National Childhood Immunisation Strategy for Aboriginal and Torres Strait Islander children. The strategy aims to increase immunisation coverage rates for indigenous children by supporting the development of community based education initiatives and enhancing immunisation coverage data so that services can better plan the development and delivery of immunisation services.

Nutrition

842. This issue is covered in Part F(a), Basic health and welfare, Survival and development, above.

HIV and AIDS

843. The spread of Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) related diseases has been of considerable concern in Australia. One concern has been the spread of HIV through blood transfusions and blood products which have resulted in actions for compensation against blood banks which may have jeopardised the continuation of such an important public service. This risk has been diminished to negligible levels by the availability since 1985 of antibody screening of the blood supply and heat treatment of blood products such as clotting factor for people with haemophilia. A variety of legislation (blood shield statutes) has been passed in all jurisdictions to deal with this and related problems. Although no court decisions have been favourable to applicants infected with HIV through medical procedures, compensation settlements have been made in all jurisdictions out of court. The Federal Government has also established the Mark Fitzpatrick Trust for the benefit of people infected in this manner.

844. Another relevant route of transmission is from HIV-infected mother to infant. Studies show the risk to be up to 25 per cent either in-utero, during delivery or through breast feeding. As at 31 December 1994, the diagnosis of HIV-infection in 36 children was attributed to the exposure category of mother with/at risk for HIV-infection. This low rate of infection of children is an indication of the success which Australia has had in containing the spread of HIV/AIDS. Australia is recognised as a world leader for its National HIV/AIDS Strategy.

845. Young people experimenting with intravenous drugs are at risk of HIV infection from sharing injecting equipment. Rates of infection in Australia are dramatically

lower than in other countries, principally because of the early introduction of harm immunisation programs, such as establishing accessible needle and syringe exchanges.

846. The epidemiology of HIV/AIDS in Australia indicates that young homosexual men are at risk of contracting HIV/AIDS. Under the National HIV/AIDS Strategy, funding has been provided for a range of programs, both nationally and at a State level, to facilitate safe sexual practices amongst young homosexual men. Program initiatives include education for young homosexual men to consider their sexual health needs, including prevention of sexually transmitted diseases and consideration of their psycho-sexual needs.

Youth Social Justice Strategy

847. Under the Government's Youth Social Justice Strategy funding was provided for an innovative Health Services for Homeless Youth Program. This program provides innovative primary health care services for homeless youth which are non-judgmental, recognise the complex needs of the target group and are co-ordinated with other youth services.

Children in remote areas

848. Mobile services provide basic children's services in areas where provision of standard services is not cost effective. They assist families whose access to general community resources and facilities is restricted. Mobile services are primarily located in rural and remote areas and while they generally serve the whole population in the area they cover, in some instances the services are specifically provided for Aboriginal and Torres Strait Islander families.

Aboriginal and Torres Strait Islander children's health

849. The issue of the health status of Aboriginal and Torres Strait children was addressed in Australia's National Program of Action in response to the UN Declaration on the Survival, Protection and Development of Children. Children's health problems identified by the National Program of Action included high infant and child mortality rates, low birth weights, malnutrition, higher levels of infections, lower levels of completed vaccinations and a higher incidence of diarrhoea and respiratory diseases. (Issues relating to food and nutrition; maternal deaths; fertility rates and infant mortality were covered above, under Part F(a), Basic health and welfare; Survival and development.)

850. Aboriginal children, especially those living in remote communities have a high incidence of diseases of the respiratory and digestive system. The National Aboriginal

and Torres Strait Islander survey conducted in 1994 found that in the zero to four age group 9.4 per 1,000 had experienced a disease of the respiratory system. The rate increased in the 5 to 14 age group to 10.4/1,000 and remained high at eight in the 15 to 24 age group. The under 15 year olds had the highest rate of asthma with 11.4 /1,000 for males and 8.7 for females. See Tables F7 and 8.

851. Chronic ear disease is another major problem among Aboriginal children with otitis media (middle ear infection), deafness and perforated eardrums occurring frequently. Otitis media develops during infancy and contributes heavily to ear perforations and effusions. As many as 41 per cent of the children in one remote Aboriginal community have been shown to suffer from the disease. The hearing loss has a strong impact on Aboriginal school children's classroom attendance, behaviour and learning. The National Aboriginal and Torres Strait Islander Survey 1994 found that in the under 15 year age group 6.6 males and 5.6 females per 1,000 reported a current ear or hearing problem. See Table F8.

852. Aboriginal and Torres Strait Islander children appear to be more at risk of death from external causes. The National Aboriginal Survey 1994 found that injury and poisoning occurs with significant frequency. The rate per 1,000 in the zero to four year old age group was 1.5; 3.2/1,000 for five to 14 year olds and 3.9/1,000 in the 15 to 24 year age groups reported to have experienced an injury or poisoning in 1994.

853. The hospitalisation ratios of Aboriginal people are higher in all age groups compared to non-Aboriginal people. In 1991-92 for Aboriginal males the standardised hospital admission rate of 371 per 1,000 population was 71 per cent higher than for non-Aboriginal males. .The admission rate for Aboriginal females, which includes admission for childbirth, was 354 per 1,000, 57 per cent higher than for non-Aboriginal females.

854. In the zero to four year age group the admission rate of Aboriginal males is 514/1,000 compared to their 353/1,000 non-Aboriginal counterpart (a rate ratio of 1.5). For Aboriginal females in the same age group the admission rate is 413/1,000 compared to 245 for non-Aboriginals (a rate ratio of 1.7). See Table F9 for a break down for age-specific hospital admission rates by sex for Aboriginals and non-Aboriginal in 1991-92 per 1,000 persons. The leading causes of Aboriginal hospitalisation were diseases of the respiratory system, infectious diseases, injury and poisoning.

855. Traditionally, the oral health of Aboriginal peoples has been considered excellent even though caries remain largely untreated. However, the pattern appears to have

changed and Aboriginal children now experience dental caries more often. Data from the 1993 Child Dental Health Survey in the Northern Territory has revealed a significantly higher decayed, missing and filled teeth score in 12 year old Aboriginale than in non-Aboriginale.

856. Foetal Alcohol Syndrome, a birth defect linked to the consumption of alcohol by mothers during pregnancy, occurs significantly more often among Aboriginal babies. Out of 26 cases notified during the period 1980-93 to the Birth Defects Registry of Western Australia, almost three quarters of the cases occurred in Aboriginal infants, with a birth prevalence rate of 1.1 per 1,000. This compares with the rate of 0.02 per 1,000 for non-Aboriginal infants.

857. While primary responsibility for the provision of health services rests with State and Territory Governments, Federal programs which provide funding on indigenous health include the following:

- spending approximately $83 million annually to support around 100 services which provide culturally appropriate, locally controlled health services to complement existing mainstream services provided by States and Territories;
- responding to the recommendations of the Royal Commission into Aboriginal Deaths in Custody by providing resources to tackle some of the underlying causes of poverty among indigenous Australians;
- development of a National Rural Health Strategy to foster better service delivery in rural Australia; and
- funding a consultancy to examine the needs of indigenous peoples in relation to mental health services with a particular focus on the needs of young indigenous people.

858. It should be noted that the consistently higher levels of respiratory, skin, ear, eye, infectious and parasitic problems experienced by Aboriginal and Torres Strait Islander peoples reflects their relatively poor socio-economic position and the inadequate physical and social environments in which many Aboriginal people live. For example, the availability of good quality water to remote communities is a factor which contributes to health status of Aboriginal children. Whilst there is no national data to quantify the extent of waterborne disease in the Aboriginal Islander population diarrhoeal disease, common in infants and young children is often associated with the lack of water and poor hygiene.

859. In 1992 the Aboriginal and Torres Strait Islander Commission (ATSIC) completed a national survey on housing and community infrastructure needs and found that the quality of water available for use by a significant number of Aboriginal and Torres Strait Islander people is less than the accepted Australian standard. Some 17 per cent (14,616 people) of the population living in discrete communities relied on

water not complying with the National Health and Medical Research Council (NH&MRC) guidelines on water quality.

860. This issue has been the subject of a recent report by the Race Discrimination Commissioner of the Human rights and Equal Opportunity Commission. The Commissioner's report Water - A Report on the Provision of Water and Sanitation in Remote Aboriginal and Torres Strait Islander Communities released in 1994, examined the difficulties experienced by Aboriginal communities in accessing adequate and reliable supplies of water. The Government's response to the Report is currently under consideration but was not complete at the time of writing.

861. The management of water resources and the provision of water, sewerage and drainage services in Australia is primarily a State and local Government responsibility. The Federal Government provides financial assistance to the States and Territories for water resource management and development through the Federal Water Resources Assistance Program and water supply through the Country Towns Water Supply Improvement Program.

862. The issue of Aboriginal and Torres Strait Islander children's health is one of the issues addressed in the First and Second Reports of the Aboriginal and Torres Strait Islander Social Justice Commissioner. The Government is currently considering its response to these Reports.

National Aboriginal Health Strategy

863. In response to the continuing poor health status of Aboriginal and Torres Strait Islander people, a meeting of Federal and State Ministers for Health and Aboriginal Affairs in December 1987 agreed to establish a Working Party to examine the development of a National Aboriginal Health Strategy (NAHS). The final report, published in March 1989 and developed in consultation with State and Territory Governments and Aboriginal and Torres Strait Islander communities representatives, led to the establishment of an Aboriginal Health Development Group (AHDG) to set priorities for implementation. The Group reported in December 1989.

864. In December 1990 the Federal Government confirmed that it would provide $232 million in additional funds over the five years from 1990-95 to implement the NAHS. In accordance with the main recommendations of the AHDG Report, the funds were to:

- address urgent public health needs in Aboriginal and Torres Strait Islander communities such as housing, water, sewerage, electricity, communications and roads in conjunction with State, Territory and local Governments;

- establish new, and upgrade existing, Aboriginal and Torres Strait Islander community-controlled health services; and
- establish an Office of Aboriginal Health within ATSIC to oversee and co-ordinate implementation of the NAHS.

865. An evaluation of the first phase of the NAHS was completed in December 1994.

866. In the 1995-96 Budget the Federal Government announced a number of initiatives to build on the achievements of the first phase of the National Aboriginal Health Strategy.

867. From 1 July 1995, responsibility for existing Federally funded Aboriginal health services and substance abuse programs will be transferred from ATSIC to the Department of Human Services and Health. This move will enable Aboriginal and Torres Strait Islander health to strengthen its position within the wider health system.

868. Funds have also been allocated in the 1995-96 Federal Budget to:

- establish a National Indigenous Health Workforce Cooperation to recruit, train, and employ health personnel to support Aboriginal and Torres Strait Islander health services;
- institute a relief staff scheme to enable Aboriginal Health Services to employ extra staff while permanent staff attend training in or out of the workplace;
- assist community controlled Aboriginal Health services to develop innovative strategies to address mental health care in primary health case settings; and
- improve hearing services and assist young Aboriginal and Torres Strait Islander people.

869. In total, the next four years will see an additional $103 million allocated to Aboriginal and Torres Strait Islander health initiatives.

870. The Department of Human Services and Health will work directly with ATSIC to ensure effective coordination between primary health care and environmental health programs, which will remain with ATSIC. ATSIC Regional Councils will retain a central role in priority setting and planning processes for primary health services.

871. The Department of Human Services and Health will also be working closely with State and Territory Governments to improve coordination and delivery of mainstream health and related services to Aboriginal and Torres Strait Islander people.

Female genital mutilation

872. The occurrence of female genital mutilation in Australia has been insignificant in the past. However, with the increase of migration from countries where this is practised, it is apparent that this issue should be addressed in an Australian context.

873. According to Dr Brendan Nelson, then President of the Australian Medical Association, there are 78,000 women who have migrated to Australia from countries where female genital mutilation is practised. Around 22,000 of those women are from countries where 90 per cent of women have undergone infibulation.

874. Evidence of the actual occurrence in Australia of female genital mutilation is only anecdotal, as documented by the Family Law Council report on Female Genital Mutilation in June 1994. The issue arose in a child abuse case, heard in the Magistrate's Court in Melbourne in December 1993. The case was an action against the father of two girls who were infibulated. There has been some other evidence of the practice in Melbourne, the Australian Capital Territory and Western Australia. There have been two reported cases of genital mutilation in New South Wales.

875. The Australian Law Reform Commission assessed the issue in Multiculturalism: Criminal Law (Discussion Paper 48, May 1991). At that time, the Law Reform Commission concluded that there was no need for enactment of special legislation to prohibit female genital mutilation. The recommended approach was one of prevention rather than punishment.

876. In response to the Australian Law Reform Commission Report, Australian Governments reviewed the adequacy of their existing laws to deal with the issues of female genital mutilation. All States have laws of assault which could provide compensation. In addition, all States have legislation which provides for intervention by authorities when a child is perceived to be in need of care:

Australian Capital Territory:	Children's Services Act 1986
New South Wales:	Crimes Act 1902
	Children (Care and Protection) Act 1987
Northern Territory:	Community Welfare Act 1983
Queensland:	Children's Services Act 1965
South Australia:	Children's Protection Act 1993
Tasmania:	Child Welfare Act 1960
Victoria:	Children and Young Persons Act 1989

877. In the last two years however, the debate on female genital mutilation has highlighted its physical, psychological, emotional and sexual ramifications. In September 1993 the Attorney-General asked the Family Law Council to examine the adequacy of existing Australian laws to deal with the issue. The Family Law Council Report on Female Genital Mutilation referred to above concluded that the practice has damaging persisting effects. The Council also noted international instruments and declarations which require Australia to work for the eradication of female genital mutilation and recommended that education must be a first priority in any program for the elimination of the practice. The Council concluded that legislation is necessary because education alone will not result in the elimination of female genital mutilation and that social legislation is required so as to make it clear that female genital mutilation is an offence in Australia. In September 1994 the Queensland Law Reform Commission released Report No 47 on Female Genital Mutilation. This report reached similar conclusions to those of the Family Law Council.

878. The Federal Government recognises that parents must be supported in resisting pressure within their families and the community to continue the practice on their daughters. The Government has adopted the recommendation of the Council that any legislative response be accompanied by an education program for the relevant communities. To this end, the Government has allocated approximately $3.6 million over the next five years for developing an education program in co-operation with State and Territory Governments. The aims of the program are to provide early, skilful and culturally appropriate intervention to prevent female genital mutilation occurring and to assist those who have been subjected to the practice. The Department of Human Services and Health is in contact with State and Territory Health Departments at officer level in relation to the funding.

879. All State and Territory Governments have also agreed that there is a need for specific legislation to ban female genital mutilation. The Federal Government does not have to legislate because the States and Territories agreed to do so. Governments will include extraterritoriality provisions prohibiting the intentional removal of girls from the jurisdiction to undergo the procedure. As yet New South Wales and South Australia are the only jurisdictions to have passed legislation. The other jurisdictions are being encouraged to base their provisions on the South Australian Act which closely follows the model developed by the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General.

Mental health

880. The Report of the National Inquiry into the Human Rights of People with Mental Illness, Human Rights and Mental Illness, (HREOC, 1993) addressed, among other things, mental health issues relating to children and adolescents and children of parents with a mental illness. A Discussion Paper was released in February 1994 representing the Federal Government's first step in developing its response to the report. Following a national consultation process, the Federal Government's response was announced in the 1994-95 budget and indicated that the Federal Government would:

- provide $12 million over four years, to assist in preventing the abuse and neglect of children and adolescents through the implementation of the Federal elements of the National Prevention Strategy for Child Abuse and Neglect, a joint Federal, State and Territory initiative;
- refer the Report to the Youth Policy Task Force of the Ministerial Council on Education, Employment, Training and Youth Affairs;
- address the evaluation and outcomes of the Department of Employment, Education and Training 1993 National Youth Grants Projects which investigated the emotional/psychological well-being of young people experiencing multiple disadvantage and developed suicide prevention measures;
- continue the development of National Health Goals and Targets of Australian children and youth with a focus on health and the prevention of youth suicide;
- provide $3 million for applied mental health research. A proportion of this funding will be administered by the Research and Development Grants Committee The research will be psycho-social in nature and is anticipated to assist in policy development;
- provide $8 million over four years to conduct a Community Awareness Program which is designed to raise awareness of mental illness, reduce stigma and discrimination and promote mental health in the community. Young people have been identified as a prime target for promotion and prevention in the context of the Program. Attitudinal research suggests that young people are keen to learn and likely to be more tolerant towards people with a mental illness than the older community. The first stage of the Program was launched in April 1995; and
- contribute funding support to the Inaugural National Child and Adolescent Conference in February 1995. The conference attracted a number of international speakers.

881. With respect to children of parents with mental illness the Federal Government proposes to provide support for demonstration projects under the National Mental Health Project Funding, including:

- $254,000 to develop, implement and evaluate a range of support and psychosocial educational group programs targeting school children who have a parent with a mental illness, and parenting education programs for people with a mental illness in Victoria; and

- $234,000 for a pilot project in New South Wales to evaluate a home-based family support service for parents with a mental disorder with infants zero to three years old, so that they can provide a safe and nurturing environment for their children.

882. A consultancy report on model mental health legislation was considered by the National Mental Health Working Group of the Australian Health Ministers' Advisory Council in February 1995. Central to the consultancy is a concern for the human rights of people with mental illness and, in particular, the issue of enforced incarceration. The report specifically places juvenile issues in a psychiatric rather than forensic environment.

883. All State and Territory Governments are currently considering the model mental health legislation report in the context of their own ongoing mental health reform. The main objective of the consultancy report is to reform the civil detention and treatment regime of people with mental illness. Separate from that exercise, the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General has circulated a Model Bill which provides for more accountability and limits the length of time that a person with a mental illness may be detained as a result of their involvement in the commission of a criminal offence. The Committee will be producing a final draft of the Model Bill after it examines the results of nationwide consultations on the first draft of the Bill.

884. The Federal Government is also taking steps to address the rates of youth suicide in Australia. In the 1995-96 budget it was announced that $13 million would be provided over four years to 'urgently reduce the high levels of suicide among young people'. The funding will be used to investigate the causes behind youth suicide, establish suicide awareness programs and train health professionals, particularly in rural and remote areas. See Table F10 for statistics on suicide death rates by age and sex. This table indicates that there has been an increase in the number of suicides for males in the age group 15 to 24 years.

International co-operation

885. The overall goal of Australia's health aid programs is to improve the health status of people in developing countries through support for health care services that provide simple, cost-effective methods of prevention and treatment; that emphasise community participation; and are directed towards those most in need. There is a strong emphasis on primary health care, disease control and community health education. Australia's health aid recognises that the burden of disease in developing countries falls heavily on women and children as a result of their unequal access to adequate health care and other essential social services.

886. Since the World Summit for Children and Australia's signing of the Convention on the Rights of the Child in 1990, the Australian Government has significantly increased its aid commitment to programs and projects which target basic needs of children, in areas such as health (including maternal and child health and family planning), water supply and sanitation, nutrition and basic education.

887. In 1994-95 Australia doubled its support for health activities in developing countries with the introduction of a $10 million four year Health Initiative. The Health Initiative focuses on countries in the South East Asia and South Pacific region and targets four priority diseases: malaria, polio, neo-natal tetanus, and HIV/AIDS, diseases that seriously threaten child survival and family welfare in developing countries. Total projected health expenditure for 1994-95 is expected to amount to over $69 million. Many of the health projects supported by AusAID include components which provide vital micronutrients, such as Vitamin A and iodine, which are essential for good health and child development.

888. The Health Initiative also allowed increased funding for global efforts to improve children's health and access to adequate health services. In 1994-95 Australia provided $800,000 to the WHO/UNICEF Sick Child Initiative, $780,000 to WHO's Family/maternal Health and Safe Motherhood Program, and $20,000 for UNICEF's South Pacific Children's Vaccine Independence Initiative. Australia also supports multilateral programs aimed at tackling major causes of child and infant mortality such as malaria, tuberculosis and HIV/AIDS.

889. In addition, the aid program's four year $130 million Population Initiative which was introduced in 1993-94, supports programs such as child survival, safe motherhood and reproductive health alongside family planning. Australia's population programs emphasise free and informed choice by men and women as to the number and spacing of their children, access to safe and effective family planning; and quality of care. The Population Initiative trebled Australia's expenditure on maternal and child health and family planning programs. Expenditure in 1994-95 will amount to over $30 million.

890. Australian aid funding for water supply and sanitation activities, which is predominantly only directed to needy rural areas, increased from $5.5 million in 1991-92 to over $30 million in 1994-95. This increase recognises the key role of clean water and sanitation in improving community health. The Australian Government recognises that basic education, with equal access for women and girls, is essential to all aspects of social and economic development. Expenditure on primary and secondary education and teacher training amounted to over $31 million in 1993-94. In accordance with the findings of the International Conference on Population and

Development and the World Summit for Social Development the 1995-96 budget provided increased funds for basic education programs. The Australian Government will continue to examine ways in which it can best assist countries to strengthen their education systems.

State and Territory matters

General

Australian Capital Territory

891. In the Australian Capital Territory infant and child morbidity and mortality in the hospital setting is diminished through the education of staff, parents and children. This education includes ante and post-natal classes, and parenting groups for new mothers. Education is provided regarding children's illnesses, and group classes are given regarding specific diseases (eg asthma). Genetic counselling is given where required, and early intervention is planned. A comprehensive statistical base dealing with prenatal morbidity and mortality exists in the Australian Capital Territory, and Australian Capital Territory Health is currently in the process of establishing a sub-committee of the Department of Health and Community Care, specifically designed to review trends in neonatal morbidity and mortality.

892. Almost all clinical services (except age-specific services specifically excluding children) are made as accessible to children as possible. Out-patient clinics are conducted for children with chronic or long term illness. Dental services are provided to all primary school aged children in the Australian Capital Territory, to those under school age (at the parent's request), and to the high school children of economically disadvantaged parents.

893. The Queen Elizabeth II Home for Mothers and Babies provides specific post-natal services for mothers and infants through residential and day care services. The service is staffed by midwives and nurses. It receives approximately $1.2 million in grants per annum. Community Nurses also provide ante and post-natal support for women, including home visits to newly born infants and referral to early childhood clinics, parenting groups and Family Care Centres. Other ante-natal services offered by Australian Capital Territory Health include educative services and the recently opened Ante-Natal Clinic. Post-natal issues are also being evaluated in the current development of a post-natal policy for Australian Capital Territory Health.

894. Specialised services provided by the Department of Health and Community Care to particular population groups include an Aboriginal Health Service and a Women's

Health Service. These agencies provide clinical and health promotion services in a manner which is appropriate to the specific needs of these groups. A Migrant Unit provides an interpreter service and assists with the development of culturally and linguistically appropriate health promotion material. A central health promotion unit, Health Advancement Services, provides direct health promotion services and assists health care workers to develop skills in health promotion and primary health care to ensure that the health and information needs of local populations are adequately addressed.

895. The Department of Health and Community Care's Grants Program provides funds to those who can show a capacity to promote, protect or improve the health of Australian Capital Territory residents. Special attention is given to proposals which are aimed at assisting those groups in the community which are identified as most at risk in health terms. Many of these services are relevant to the Convention. The grants allocated for these services amounted to $763,908 in 1994-95. Grants are provided to services such as the Pregnancy Support Service, Family Planning Association and the Nursing Mothers Association of the Australian Capital Territory, which provide services directly and indirectly to youth, in line with the Convention.

896. The Australian Capital Territory Department of Health and Community Care is responsible for the AIDS Matched Funding Program and the Medicare AIDS Component. This funding assists in providing education and prevention as well as treatment programs in public hospitals, and through Government and non-Government agencies in the Australian Capital Territory. Children in the Australian Capital Territory have access to a variety of HIV/AIDS services including programs aimed at prevention through age appropriate education, medical treatment, and support services such as counselling for those with the virus and their families.

897. The Department of Health and Community Care aims to intervene early in childhood health problems and to involve parents as much as possible in child health services, to improve the health of children to the greatest possible extent. Community nurses provide immunisation at health centres, clinics and schools to reduce the occurrence of preventable diseases in children, and Regional Health Services aim to provide readily accessible health services to improve the health of the population.

New South Wales

Services

898. The New South Wales Health Department provides a broad level of health care service delivery to children. Services are provided free and are available to all

members of the public. This is provided through 10 Area Health Services and 23 District Health Services and includes:

- three major paediatric referral centres following the relocation of the Royal Alexandra Hospital for Children to Westmead;
- paediatric units in 17 District hospitals. As well, services are provided for children in 89 public hospitals across New South Wales;
- comprehensive health surveillance and screening provided through 480 Early Childhood Health Centres;
- parenting advice and support to families with children zero to five years old through 25 Family Care Cottages;
- parenting advice and support to high risk families with children zero to five years old through four residential Family Care / Mothercraft Centres with outpatient and outreach services attached;
- free call 24 hour crisis telephone service;
- free call interactive telephone service;
- two-hundred and fifty Community Health Centres;
- health screening and surveillance of school children; and
- nine innovative health services for homeless young people.

899. In addition, home visiting programs targeting high risk families are being piloted in several locations across New South Wales.

900. The New South Wales Health Department is focusing on improving knowledge about the relative outcomes and costs of health services, ranging from diagnosis and treatment to prevention. Under the banner of the Health Outcomes Initiative, the Department has selected a number of priority health areas including:

- adverse pregnancy outcome and impaired child development which includes a Statewide postnatal depression education program;
- injury and in particular a Statewide child protection service enhancement project;
- infectious diseases; and
- asthma.

901. Neo-natal intensive care costs are networked throughout New South Wales permitting the immediate transfer of premature babies requiring ventilation to appropriate services. The Pre-natal Services Network co-ordinates neo-natal services, in particular retrieval services for sick babies requiring transport from remote areas.

902. Other important projects in child health include:

- the revision of the New South Wales Health Department Personal Health Record (PHR) which is presented to the parents of all newborn babies in New South Wales. The book is used to record a child's health growth and development and it is maintained by health professionals and parents. The PHR also contains relevant health information for parents;
- the New South Wales Health Department publishes a New South Wales Birth Defects Register on an annual basis;
- the New South Wales Health Department publishes an Annual Midwives Data Collection report;
- Hot Water Burns Like Fire campaign to reduce scalds in children zero to five years of age;
- Childsafe New South Wales - a program for collecting injury data;
- Early Childhood Injury Prevention Program now incorporated in the Personal Health Record;
- Playground safety project - a joint project working with Kidsafe and local Government;
- a Poisons Information centre;
- legislation requiring proof of immunisation status prior to enrolment in childcare, preschools and schools;
- the Sudden Death Syndrome program;
- a program to improve maternity services;
- Middle Ear Guidelines;
- Hospitalisation of Children Guidelines;
- providing advice to assist in the development of the National Goals and Targets for Children and Young People;
- participating in the development of a new Youth Health Policy;
- National Child and Youth Health Policy;
- the Caring for Children pre-school nutrition program which aims to ensure children in long day care receive meals/snacks that provide at least 50 per cent recommended daily intake of nutrients; and
- the New South Wales School Canteen project which aims to increase availability of healthy food choices in school canteens.

903. The public health system in New South Wales is strongly committed to ensuring that children have access to the highest possible standards of health care. Following the release of the Shearman Report into Obstetrics and Maternity Services, the Government has recently completed an extensive review of maternity services in

New South Wales, with additional funding for the expansion of those services. The objectives of this report and the Government's response, is consistent with Article 24.

Child and Adolescent and Family Health Priorities

904. The New South Wales Health Department is formulating the direction for a Child Adolescent and Family Health Policy. The policy is based on the National Goals and Targets for Australian Children and Youth and the National Child and Youth Health Policy. The aim of the policy is to:

- determine priorities for children's services in New South Wales;
- determine the child health status in New South Wales; and
- provide a benchmark by which to measure future health status.

905. In addition, the New South Wales Health Department is developing an outcome focused minimum data set for child adolescent and family health.

906. The Department of Health's Early Childhood Health Policy is being reviewed. The ratification of the Convention, together with the devolution of responsibility to Area Health Services and District Health Services provided the impetus for this review.

907. The Royal Alexandra Hospital for Children is the major centre for the treatment of sick or injured children throughout the State and more effective networking arrangements are being developed to ensure the best possible care. The newly built Children's Hospital is a state of the art facility, bringing greater resources to Sydney's western suburbs, where more than half of the State's children reside.

Health services for non-English speaking people

908. The New South Wales Health Department is committed to ensuring that all health services are accessible and appropriate to the needs of people from non-English speaking backgrounds (NESB). The Department's efforts in developing linguistically and culturally appropriate health services are well recognised nationally and internationally as outstanding examples of patient focused care. Some examples of the kind of services established in recent years include:

- The Health Care Interpreter Service; New South Wales is the only State known which provides trained health care interpreters in over 50 languages, free of charge, on a 24 hour seven days a week basis to the people of New South Wales. The Department also has its own Health Translations Unit responsible for the production of a wide range of health publications in some 20 community languages.

- The Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS): STARTTS was the first service of its kind in Australia. It remains Australia's largest service and is now recognised internationally as one of the four centres of excellence in the provision of rehabilitation services to torture and trauma survivors.

- Transcultural Mental Health Centre: The Centre, located in Cumberland Hospital, is a State wide service which provides information and consultancy to health professionals on the mental health needs of people from NESB, undertakes research and training on cross cultural mental health issues and plays a key role as broker which is able to link people from NESB with Mental health problems with bilingual mental health professionals across the State.

- Bilingual Counsellors Program: Bilingual mental health workers (covering some 20 community languages) are specifically employed under this program to increase the access by people from NESB to primary mental health services and to develop appropriate community based support services.

- The Drug and Alcohol Multicultural Education Centre (DAMEC): The Centre provides information, training research, and consultancy services to health professionals concerned with the Drug and Alcohol needs of people from NESB.

- Ethnic Obstetric Liaison Officers Program: Under this program, the New South Wales Health system employs bilingual midwives in key maternity hospitals to assist young women from non English speaking background to understand the birthing process and established hospital procedures. The liaison officers also advocate on behalf of these women, as required, and assist maternity staff to better understand the cultural and religious practices and needs of these women.

- Multilingual HIV/AIDS Education and Support Service: The service provides information, education, and support services, in conjunction with mainstream health professionals, to young people who are sufferers of HIV/AIDS. The service also undertakes research and consultancy to mainstream services wishing to provide more linguistically and culturally appropriate health services.

909. Apart from the above mentioned services, the Department provides a number of additional information and support services to people from non-English speaking background. Briefly, these services include:

- the provision, in twenty community languages, of information, referral and health promotion activities; and

- various health information and screening services for newly arrived refugees.

910. All multicultural health services in New South Wales are co-ordinated and closely monitored by a network of policy officers whose role is to ensure that health services are delivered to our culturally diverse society in an accessible and appropriate manner.

911. The Multicultural Health Promotion Co-ordinator is responsible for identifying the health promotion needs of people from non-english speaking backgrounds,

ensuring that health promotion programs are accessible and appropriate, and making effective use of the ethnic media.

912. Strategies have been introduced to facilitate health delivery and ongoing well-being of young mothers and their babies. These include extended service hours, education programs targeting pregnant adolescents, as well as clinical and supportive programs for young mothers.

913. In New South Wales there is a network of over 30 non-government Women's Health Centres Women's Health Services funded to provide services relating to:

- reproductive health and sexuality;
- family planning (including young mothers support groups);
- substance abuse;
- domestic violence;
- sexual assault;
- emotional and mental health; and
- health promotion and education.

914. Strategies have been introduced to facilitate health delivery and ongoing well-being of young mothers and their babies. These include extended service hours; outreach and midwifery based antenatal care and education programs, targeting pregnant adolescents, as well as clinical and supportive programs for young mothers; and several joint initiatives between the Departments of Community Services, Health and School Education in which a collaborative approach is being taken to the provision of services for families with children zero to five years old in school settings and parenting programs in the antenatal and postpartum period.

915. The Government funds the following community based projects to provide services for young women with special health needs:

- Phoebe House: this is a residential program for methadone-maintained pregnant women and women with their babies;
- Charmain Clift Cottages Inc: residential accommodation is provided for women and their children with mental health disorders; and
- Dympna House: this is a community based incest counselling and resource centre.

Young people with a mental illness

916. The New South Wales Government is committed to providing services to meet the needs of young people experiencing mental disorder or mental health problems. Specialist community based child and adolescent services are being introduced across the State complementing similar service developments for adults. These services, together with community health services, work to provide a range of specialist and primary health care interventions through various service modes, including acute psychiatric intervention, psychological counselling, health promotion and family planning services.

917. To ensure that acutely disturbed and mentally ill young people receive optimal care, a new acute admission service for adolescents has opened at Westmead Hospital and a second will be established at Liverpool Hospital in two years time. All general psychiatric inpatient services are being designed with the potential to provide a suitable environment for a young person if admission is required. In addition, increasing emphasis is being placed by Areas/Districts upon early intervention with young people experiencing mental disorder, with particular attention to ensuring that first acute episodes are managed actively across all treatments.

Health complaints unit

918. On 1 July 1994, The Health Care Complaints Act commenced operating in New South Wales. The aims of the Act are to:

- promote the rights of patients in New South Wales;
- provide clear and easily accessible mechanisms for the resolution of complaints;
- facilitate the maintenance of health services and the dissemination of information about client's rights throughout the health system;
- establish an independent Health Care Complaints Commission to investigate complaints made about health services;
- provide an independent mechanism for assessing whether the prosecution of disciplinary action should be taken against individual health practitioners who are registered under health registration Acts; and
- provide for reports to be made to Parliament on issues arising out of an investigation of the health system.

Northern Territory

919. Both ante-natal and post-natal classes are held at Territory hospitals in order to provide proper care for mothers. After the birth of the child, child clinics continue to monitor the progress of the child and to offer support to the mother of the child.

920. Infant and child mortality and morbidity in the hospital setting is diminished through education of staff, parents and children. This education includes ante-natal and post-natal classes and individual education regarding children's illnesses. After the birth of the child, child clinics continue to monitor the progress of the child and to offer support to the mother of the child.

Queensland

921. The Department of Health has encouraged steps to protect children from the major causes of childhood mortality. The Education Department has a Personal Safety Education Program within its Human Relationships Education Program which provides students with skills to protect themselves from life-threatening situations and to be able to react appropriately in a life-threatening situation. The focus is on emotional, physical and sexual abuse and situations of domestic violence. Legislation has also come into force which includes compulsory car restraints for babies and children, swimming pool fencing to protect children and helmets for all bicycle riders.

Health services

922. The regional health authorities provide a network of curative and preventive health services for children. The pre-natal mortality rate in Queensland in 1990 was 9.3 per 1,000 births compared to 10.3 for Australia. Prenatal and post natal care for mothers is provided free of charge in public hospitals. The maternal mortality rate was approximately 8.3 per 100,000 births for the three year period 1988-1990.

923. At school entry 95 per cent of parents report that their children are either partially or fully immunised against diphtheria, whooping cough and tetanus; 94 per cent report being fully or partially immunised against poliomyelitis; 91 per cent report being immunised against measles; and 87 per cent immunised against mumps. A screening program based on National Health and Medical Research Council guidelines is offered by regional health authorities to children from birth to the end of primary school. The Department of Education school health nurses and dentists visit schools and check the health of children at those schools as well as helping with preventive programs.

Health complaints unit

924. In Queensland an independent Health Complaints Unit was established in July 1990 to investigate complaints against health care providers. Legislation is also currently being drafted which will include and extend the functions of this unit and establish a Health Rights Commission. Such legislation will enshrine the rights of consumers to participate effectively in decisions concerning their health. The Commission will have powers to investigate patient complaints in both the public and private health sectors, conciliate disputes and protect the rights of health service consumers. It will also have an educative role, informing health consumers of their rights and of the mechanisms of redress available to them.

Clean water

925. Local Government authorities are responsible for the supply of drinking water. Queensland Health and local government authorities have adopted all guidelines, except for those pertaining to microbiological quality, contained in Guidelines for Drinking Water Quality in Australia, produced by the National Health and Medical Research Council and the Australian Water Resources Council. The World Health Organisation standards have been adopted for microbiological quality. Queensland Health and the Water Resources Commission, Department of Primary Industries, have produced a handbook, which sets out guidelines for monitoring and sampling drinking water, for local Government authorities.

926. The Young People at Risk: Access, Prevention and Action Program is aimed at the prevention of self harming and suicidal behaviour amongst young people. The Program will be delivered by Regional Health authorities in Queensland. The Program will target those young people who are at greater risk of self harming or suicidal behaviour, including:

- young people with mental illness;
- young men with access to firearms;
- young women;
- young Aboriginal people and Torres Strait Islanders; and
- young people who are unemployed.

927. The Program will promote active community involvement in identifying local issues and formulating a sustainable health system and community response. The Queensland Government allocated $1.5 million to the Program in 1994-95.

South Australia

928. In November 1990 the South Australian Health Commission endorsed a policy statement on child health. The policy goals are derived directly from the UN Convention on the Rights of the Child. The policy principles also enshrine the values inherent in the Convention. This policy framework has subsequently informed the development of an implementation plan which will guide the planning and provision of health and health-related services for children.

929. The policy focuses on children from birth to the end of primary school with a companion policy focussing on youth, that is, from the beginning of high school to adulthood. The child and youth health policies were developed as a result of a process involving extensive consultations with service providers, community groups and young people. However, there was no consultation undertaken with children directly.

930. The Child Health Policy has been developed within the context of the South Australian Government's Social Justice Strategy and the South Australian Health Commission's Primary Health Care Policy which requires seeking the greatest health for the greatest number, protecting children at high risk, and acting to remove the constraints which prevent children from attaining a higher level of health.

931. In implementing the policy a number of priority areas for action in child health have been identified, as follows:

- Aboriginal children are at greater risk for a range of health problems than non-Aboriginal children;
- children living in rural areas of the State do not have access to effective and appropriate health services comparable to those provided in urban areas;
- the health status of children in poverty, or in lower socio-economic groups tends to be lower than that of children in the general community;
- children with special needs do not always have equal access to, and participation in, community services;
- children and their families from non-English speaking backgrounds have difficulty accessing health services;
- there is a major concern about fragmentation and duplication of efforts among programs, policies and providers in the health and health related sectors; and
- advocacy for children's rights is needed when overall responsiveness to children is being altered by current economic and social variables.

932. Currently a process of consultation is occurring in regard to implementing the Child Health Policy. The nature of this work is such that it will play a vital role in the

improvement of children's health, particularly those in disadvantaged circumstances. The policy and its implementation plan clearly recognises the right of children to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.

933. A range of health services are available to children and young people. For example, The Adelaide Children's Hospital provides primary health care to children of all ages. The Child Adolescent and Family Health Services focuses on the providing primary health care to children under five years old. The Child Adolescent Mental Health Service provides services to children and young people with emotional and mental health problems. The health needs of homeless and itinerant young people are serviced by the Second Storey Youth Health Centre.

Tasmania

934. The Department of Health is developing a health policy for children and young people. An information system to enhance management and planning in personal health records, prenatal and paediatric mortality morbidity and family and child health is being developed.

935. The Department provides numerous services aimed at children. Most of these services are conducted by the Family and Child Health Service and include child health clinics, child health nurses in schools (infants, primary secondary and some colleges), classes in prenatal and health education classes, health education and post-natal care for mothers.

936. Hospitals cater for children by placing them in specialised wards. There are also Mental Health Child and Adolescent teams and services such as the Douglas Parker Rehabilitation Centre.

937. The Department of Health also gives grants to a number of children's services. These include CANTEEN, the Child Health Association, Family Planning Tasmania, Link Youth, Pregnancy Support, Asthma Foundation, Life 'Drug-line', Diabetes Australia (Tasmania) and the Aboriginal Health Service and Aboriginal Child Centre.

938. The Community Support Program administers grants to non-Government organisations to provide a range of primary prevention services and community infrastructure, for example, family support services, personal and family counselling, child care and neighbourhood houses.

939. The Department of Health through the Health Policy Division, Regional Health Boards and State Nutrition Officers has responsibility for the reduction of diet related health problems. The Department is developing a food and nutrition policy and has set a series of targets aimed at improving nutrition amongst the general population. For example, by the year 2000, the Department aims to:

- increase the incidence and duration of breastfeeding so that 80 per cent of infants are still breastfed at three months of age; and
- extend peoples' skills and knowledge about health food choices through nutrition education in schools.

940. To achieve these aims the Department has implemented a range of strategies to:

- ensure that food and nutrition issues are included in health education curriculum for Government and non-Government schools;
- encourage schools to develop a school canteen policy based on the Australian Dietary Guidelines;
- support school breakfast programs in low socio-economic status districts;
- advocate for improved access to plain drinking water at all schools, community and sporting facilities and entertainment areas;
- support and encourage local alcohol free activities for adolescents; and
- increase training for health workers on breastfeeding and related issues.

941. The Department of Health also recognises that injury is a leading cause of death for all young Australians and that children and young people, especially males between 15 and 24 years are the high risk groups for all types of injury. To reduce preventable death and disability caused by injury the Department has set a range of targets for the year 2000 which include:

- the reduction of the rates of burns and scalds (children zero to four years old) serious enough to require hospitalisation; and
- the reduction by 10 per cent or more in the incidence of youth suicide.

942. In 1990 the Tasmanian Injury Surveillance and Prevention Program (TISPP) was funded by the Department of Health under the National Better Health Program. The aim of TISPP is to provide necessary data to better target injury prevention activities in the future.

943. There is a high level of immunisation coverage amongst school children in Tasmania against such diseases as diphtheria, pertussis, tetanus, measles, poliomyelitis, tuberculosis and rubella.

Victoria

Health policy

944. Victoria is committed to the development of a health policy for young Victorians. This is being developed, drawing on recent demographic, health status and socio-economic data, and issues identified by young people in the Youth Policy Development Council's Health for Youth document.

Birthing services

945. In recognition of the need for pregnant women and new mothers to plan for antenatal, birthing, postnatal, and early parenting services and support as part of a continuum in a complex service system, Victoria has initiated an integrated approach to information provision for women through pregnancy, childbirth and through the transition to parenthood which will assist them in receiving care and support to meet their needs.

946. The purpose of these publications, developed as part of this integrated approach, is to provide information to women and their families about the range of services available to support families during pregnancy, birth, and early parenting. The publications should assist women to make informed choices about the use of services which best meet their needs and deliver a message about the importance of planning for birth, the postnatal period and early parenting from early pregnancy.

947. The publications focus on the services generally available to women throughout Victoria, that is, standard or core services provided in the public and private sectors. Reference is also made to other services available to families with special or additional needs.

948. The Government recognises that the trend towards earlier discharge should be accompanied by the increased availability of post acute maternity domiciliary services for women who require them. Under the arrangements introduced in the 1994-95 financial year, the obstetric episode of care has been redefined to incorporate in-patient and domiciliary care in the days immediately following discharge, with responsibility clearly assigned to hospitals for the provision or purchase of postnatal care whether this occurs in hospital or in the home.

949. Hospitals throughout Victoria offer a 'package' of in-patient and domiciliary care to maternity patients. Hospital Conditions of Funding require that hospitals provide

domiciliary care to those women who require it in the days immediately following birth.

Infant health

950. The Health Department recognises the right to the highest attainable standard of health and to access to facilities for the treatment of illness and for rehabilitation. Research into infant and child mortality and disease is conducted by the Consultative Council on Obstetric and Paediatric Mortality and Morbidity, established under the Health Act 1958. The work of the Council is extremely important in identifying the causes of maternal and child mortality and educating health professionals and the community about dangers to the survival of children and preventive strategies.

951. The Council's 1989 Annual Report indicates that there has been a decline in neonatal and perinatal mortality over the last 10 years and a decline in infant mortality over the past five years. In 1989, Victoria had a rate of 12 maternal deaths per 1,000 births. Figures for the 1990 Annual Report indicate that the decline is continuing.

952. The Victorian Clinical Genetic Service screens all newborn children in Victoria for certain genetic abnormalities, provides information and education services and applies current research.

953. Other services focussing on the survival of children include the Newborn Emergency Transport Services (NETS) and the Paediatric Emergency Transport Service (PETS), the latter of which is run by the intensive care unit at the Royal Children's Hospital. Both are statewide services which operate 24 hours a day and are funded by the Victorian Government.

954. The Royal Children's Hospital and the paediatric departments of public hospitals and many Community Health Centres provide necessary medical attention and health care to all children.

955. Victoria remains committed to a primary health care program in primary schools. Victoria is currently redeveloping the School Nursing Program to respond to the health issues of the 1990s and beyond. Primary health care services to families with young children, offered through the Maternal and Child Health Services (MCHS), are based on the Health Goals and Targets for Australia's Children and Youth. As part of this initiative, certain ages and stages were highlighted and recommended when every family with young children would gain the most advantage from attending the Service. These ages and stages are based on scientific evidence that indicates these ages as

being the most crucial time for the early detection of health related conditions to enable early intervention to prevent or minimise health problems.

Psychiatric services

956. The Government aims to provide an equitable and effective psychiatric service to children and young people throughout the State. Public child, adolescent and family psychiatry services are specialist services focussing on the needs of children and adolescents who are mentally ill or severely emotionally disturbed. Child, adolescent and family psychiatry services provide:

- a range of assessment and treatment in residential and community settings for severely emotionally disturbed and mentally ill children, adolescents and their families;
- consultation and other services for children and young people; education, training and research in child, adolescent and family psychiatry; and
- liaison and service development to ensure co-ordination between education, health and community programs for children and young people.

957. Grants have been provided to Local Government to implement health information strategies for young people, and local councils are encouraged to include young people in their municipal health plans. Non-government agencies such as the Victorian Child Accident Prevention Foundation also have a significant role to play in educating the community about dangers to the health of children.

958. The Government, through the Office of Youth Affairs, has worked in partnership with the Federal Government and the Fitzroy Community Health Centre in an innovative project which targets young people who indulge in, or who are at risk of indulging in, self-harming behaviours. This project, known as the Fitzroy Youth Care Project, has adopted a peer support approach to minimising self-harming behaviours, with a range of innovative sub-programs targeting young offenders, young women, young people from non-English speaking backgrounds and homeless and marginalised young people. This activity-based approach with young people has been completed by working with local service providers to sensitise them to the needs of the young people at risk in the inner Melbourne municipality of Fitzroy.

Infectious diseases

959. The Victorian Government's Infectious Diseases Program has the following goals:

- to prevent and control the spread of infectious diseases in the community and thereby reduce as far as practicable the incidence and prevalence of infectious diseases in Victoria; and

- to ensure that the people who contract an infectious disease have access to appropriate treatment and care facilities while minimising adverse social, political and economic reactions.

960. Opportunistic immunisation has been introduced by some local government authorities through the Maternal and Child Health Service. The Victorian Aboriginal Health Service is about to undertake a three year opportunistic immunisation program through the service's Maternal and Child Health Program.

961. In recognition of the new challenges and stresses that may be associated with the transition to parenthood, the Victorian Government provided an additional funding contribution for services to first time mothers. Additional funding is also available to provide support to families with children who are identified as having particular needs.

962. In Victoria in 1991 the incidence of Sudden Infant Death Syndrome was one in 500 live births. By comparison, the incidence in 1993 had dropped to one in 1,315 live births.

963. Other programs relevant to children and youth include AIDS and sexually transmitted diseases management, tuberculosis services and Refugee Screening.

Role of child care services

964. The Children's Services Centres Regulations 1988, made under the Health Act 1958, establish protection of the child's health and well-being as the primary objective of Government intervention through regulation. Funded child care services are required to address both the care and developmental needs of children in their program guidelines and operations.

Western Australia

965. The Health Department of Western Australia supports the philosophy outlined in Article 24 and all the health services provided for children reflect the intention of this Article.

966. Primary health care services are available comprehensively throughout the State and are regionally managed by community and child health services. These services are provided free to all families with young children. The State Child Development Centre and the Child Health Services Centres provide second and third level services to children referred for primarily developmental problems.

967. A wide range of pre-natal and post-natal health care services are available statewide and parents are encouraged to attend by general practitioners, obstetricians

and community nurses. Aboriginal health workers are employed extensively to ensure that health services provided are culturally acceptable. They are also able to influence families to choose more appropriate health practices in situations where traditional practices may prejudice health.

968. Intensive Maternal and Child Health Programs have been established in several remote Aboriginal communities. The programs aim to improve the health status of young Aboriginal children by improving the environmental conditions as well as addressing their physical needs.

969. The Child Accident Prevention Foundation of Australia (Kidsafe) has a Branch in Western Australia, whose philosophy and programs are fully supported by the Health Department of Western Australia.

Child mortality

970. The Health Department recognises that every child has the inherent right to life and to this end has a very efficient process in place which enables acutely ill newborns and other children to be evacuated from all centres in Western Australia to metropolitan Perth for specialist paediatric services. There is a dedicated service, the Western Australian Neonatal Transport Service (WANT), which has been established to pick up and arrange transfer of ill babies from anywhere in Western Australia, and on occasion from interstate, to Perth. Where the condition of the baby requires it, a neonatal doctor and nurse will travel or fly to retrieve the baby. The service is effective for babies from outback areas.

971. Princess Margaret Hospital for Children and King Edward Memorial Hospital for Women have appropriate high technology, equipment and expertise which enable them to provide services to ensure to the maximum extent possible the survival and development of children. Where a parent refuses to consent to life-sustaining treatment, and in the considered opinion of health or welfare authorities, such refusal is unreasonable, steps may be taken to have the child made a ward of court, or for the appointment of a guardian (Child Welfare Act 1947).

972. Appropriate measures have been taken to diminish infant and child mortality including the funding of the Quit Smoking program and Alcohol and Other Drugs program, both of which have aspects which focus on the detrimental effects on women and their unborn children. Research is being supported, through the Western Australian Institute for Child Health Research, which seeks to diminish the number of children born with neural tube defects and other preventable causes of infant mortality.

Health and nutrition education

973. The Health Department of Western Australia adheres to the World Health Organisations International Code on the Marketing of Breast Milk substitutes and endeavours to promote breast feeding whenever possible. Child and Antenatal nutrition issues are promoted to health professionals through the Child and Antenatal Nutrition Bulletins and Manual.

974. There are a number of programs run by Health Promotion Services within the Health Department. The work of the Branch is based on a co-ordinated and planned approach to delivering programs through a variety of strategies to which children's interests are integral.

975. Programs such as the School Health Promotion Program and the campaigns launched in relation to tobacco, nutrition and alcohol all have a direct effect on children. The Branch works in cooperation with the Education Department to produce and implement the health education syllabus. One initiative in this area is the year 11 and 12 Health Studies Teachers Guide which covers sexuality, drug education (including smoking), community and environmental health, physical health, mental and emotional health, and societal health issues. A ban on cigarette advertising in the print media, together with the Tobacco Control Act 1990, ensures that most forms of tobacco advertising are prohibited. This means that young people will no longer be influenced to adopt smoking by the image of cigarettes, as portrayed by the tobacco industry. The Tobacco Control Act raises the penalty for selling or supplying tobacco products to minors from $4 to a maximum of $5,000 for individuals and $20,000 for a body corporate. The Smoking and Health Program and many other sponsorship activities target youth.

976. The National Program - Children's Fruit and Veg Campaign - targets children aged nine to 12 years with the aim of increasing positive attitudes towards, and encouraging increased consumption of fruits and vegetables. It liaises with the Western Australia school canteen committee and other health agencies to ensure that nutrition issues are addressed in the school setting.

977. The Alcohol and Other Drugs Program has recently developed the Youth Campaign which focuses primarily on drug education. The campaign produces resources for teachers, school health nurses and other relevant professionals in addition to students and parents. Professional development is also provided.

978. The Youth campaign has combined the School Health Promotion Program and the Community Drug Education Program to enhance a comprehensive approach.

979. Ante-natal and post-natal parenting programs conducted in a variety of settings seek to reduce the prevalence of poor parenting policies and provide knowledge and skills relating to child development. Earlybird ante-natal classes are also conducted by dietitians for pregnant women. The Health Department provides an extensive range of information pamphlets on antenatal and childhood health issues.

Aboriginal and Torres Strait Islander child health

New South Wales

980. During 1993-94 the New South Wales Government developed a strategic plan for the delivery of health services to Aboriginal people. The plan was based on a number of reports relating to Aboriginal health, including the National Aboriginal Health Strategy. Funding was provided to employ 21 Aboriginal hospital-liaison officers across the State in order to facilitate access to mainstream health services by Aboriginal people. New South Wales also developed a family health strategy which looks at a wide range of factors associated with child rearing as well as physical abuse and neglect of children (PANOC) and child sexual assault.

Northern Territory

981. The Northern Territory Government is standardising treatment protocols for children, promoting oral rehydration therapy and breastfeeding, and employing environmental health workers to assist in reducing the incidence of diarrhoea. Since 1992 Aboriginal environmental health workers have been employed to provide information and advice which will enhance community environmental health through the provision of advice to the community on a wide range of issues, including water and sanitation.

Tasmania

982. Tasmania has developed a pilot Aboriginal Child Health program incorporating the expertise of the Aboriginal Children's Centre and the Family and Child Health Service of the Department of Community and Health Services.

Victoria

983. The Victorian Maternal and Child Health Program is developing alternative service-delivery models for Aboriginal families and planning specialist education in maternal and child health for Aboriginal health workers.

Western Australia

984. The Health Department has recently developed Healthy Homes, Healthy Families programs which incorporate ante and post-natal education, as well as issues relating to child health. Aboriginal Health Promotion units have been established in various locations across the State. These units develop programs which aim to address local area health priorities. Health messages relating to foetal alcohol syndrome, and smoking and health in pregnancy are being developed for broadcasting on television.

985. Marr Mooditj, in conjunction with the Royal Australian College of Obstetricians and Gynaecologists, is planning to develop and deliver a program aimed at improving Aboriginal health worker skills in maternal health, including ante and postnatal and emergency childbirth services. The program is part of developing an approach to Aboriginal birthing and women's business services and is being targeted at remote and rural communities. Negotiations are underway to establish women's business and birthing centres in at least two remote areas.

(d) Social security and child care services and facilities (Articles 26 and 18, paragraph 3)

Article 26

1. *States Parties shall recognise for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law.*

2. *The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.*

Article 18

3. *States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.*

Federal matters

Social security

986. A child's well-being, in terms of standard of living and quality of life, depends to a considerable extent on the child's family's economic resources. Children are dependent on their parents for food, clothing and shelter. Equivalent income can be used to compare the financial resources of different family types. Equivalent income adjusts for the number of adults, their labour force status, and the number of dependent children in a family.

987. In 1990, 44 per cent of children lived in families whose equivalent income was $350 a week or less. Sixty-eight per cent of children in one parent families were in this category compared to 40 per cent of children in couple families. A further 16 per cent of children in couple families had an equivalent family income of more than $620 a week compared to four per cent of children in one parent families.

988. The Federal Government recognises the importance of improving standards of living for children and the Australian social security system provides a range of pensions, benefits and allowances, some of which are directed specifically to families with children. Others, although available more broadly, also assist families and/or are paid to families with children at higher rates.

989. In January 1993, Family Allowance, Family Allowance Supplement and the payments for children of pensioners, allowees and beneficiaries were integrated into a two-tier Family Payment, simplifying the system and making it easier for families to apply for assistance. Family Payment is untaxed and increases in line with the Consumer Price Index on 1 January each year. Family Payment comprises Basic Family Payment and Additional Family Payment. These will be amalgamated into one Family Payment with minimum and maximum rates from 1 January 1996.

Family Payment and other important allowances

990. Basic Family Payment is paid to families with children, in recognition of the costs of raising a child. Payment is made for each dependent child under 16 years in a person's care and control, and for full-time dependent secondary school students who are ineligible to receive a Prescribed Education Scheme payment (for example, AUSTUDY) until the end of the calendar year in which they turn 18 or until they leave secondary school, whichever is the earlier.

991. From July 1996 Basic Family Payment for children 16 and over will be administered with other education assistance programs for people of this age. The rate of Basic Family Payment is related to the number of children in the family, not to the ages of the children. The payment is income and assets-tested, but at more generous levels than the low-income-supplement Additional Family Payment, and payment extends to about 80 per cent of Australian families.

992. Additional Family Payment supplements Basic Family Payment for low-income families with dependent children. It is paid to all families receiving a Social Security pension, benefit or allowance and also to families in low paid work whose income and assets are below allowable limits. Rates vary with the age of the children.

993. A Guardian Allowance is paid to sole-parent Additional Family Payment recipients in recognition of the additional costs of supporting a child alone. Guardian Allowance is paid as part of Additional Family Payment and is subject to the same income and assets test. An increase in this payment was announced in the 1995-96 budget.

994. Rent Assistance is paid to families receiving Additional Family Payment who are renting privately, to help low-income families meet their housing costs. Maximum rates of Rent Assistance increase with the number of children (with the highest rate for single or partnered persons with three or more children). An increase in this payment was announced in the 1995-96 budget.

995. Multiple Birth Allowance is an extra amount payable for Basic Family Payment recipients who have multiple-birth children until the children reach the age of six. It is paid at one rate for triplets and at a higher rate for quadruplets and higher multiples.

996. Home Child Care Allowance has been available since September 1994 in recognition of the contribution made by parents caring for children full time. It is available to all families where one partner stays home to care for dependent children.

997. Since July 1995 a Parenting Allowance has been available to families, especially couples with a low income, when one of them stays at home to care for dependent children under 16. Parenting Allowance recognises the contribution to the community and the family of parents at home caring for children. It provides low income couples with a choice about their level of participation in the workforce - a choice previously available only to high income families. In view of their common objectives, the Home Child Care Allowance will be subsumed by Parenting Allowance.

998. From 1 February 1996 a Maternity Allowance will be payable for each new born child. Women both in and outside the paid workforce before the birth of their child will be eligible for the Allowance, provided they qualify for Basic Family Payment. Maternity Allowance will also be paid for new born adopted children and to a family where a child is stillborn.

999. The Sole Parent Pension is provided, subject to income and assets tests, to a sole parent of a child under 16 years of age. This allows sole parents the option of providing full-time care for their children without having to seek paid employment.

Other payments and services

1000. The Federal Government also provides rent assistance payments to independent/homeless youth renting privately and to students in receipt of the Homeless Rate of AUSTUDY or ABSTUDY.

1001. Young independent or homeless persons under the age of 18 are eligible for a higher rate of Youth Training Allowance, Special Benefit, Sickness or Job Search Allowances.

1002. The Double Orphan Pension helps meet the cost of bringing up children who are double orphans. A child is a double orphan if:

- both parents or adoptive parents are dead;
- one parent is dead and the other is in prison, a mental hospital, a nursing home or their whereabouts are unknown; or
- the child has been granted refugee status by the Australian Government and his or her parents are outside Australia, or the parents' whereabouts are unknown or the child is in similar circumstances to a refugee and has been admitted to Australia under an approved special humanitarian program.

1003. The Assistance for Isolated Children Scheme provides financial help to families of children who, because of geographic isolation or disability, must live away from home to attend school, study by correspondence or live in a second family home to attend school.

1004. With the exception of Disability Support Pension, Family Payment, Rent Assistance and Guardian Allowance, all basic pension, allowance and benefit payments are taxable. However, the level of income at which income tax becomes payable is currently such that pensioners and beneficiaries with little or no private income do not pay tax. Special income-tested tax rebates are available for pensioners and beneficiaries.

1005. The Department of Social Security also provides specialist Youth Service Units to persons under the age of 18 years. These units deliver case management and mainstream services in an environment which is accessible and comfortable for young people. They also provide an outreach service to places frequented by homeless youth. In addition, the Federal and State Governments have developed a Youth Protocol to improve the delivery of support to homeless young persons aged under 18.

1006. Fifteen Pilot Specialist Family Service Centres will open from January 1996. These Centres will provide families with information and advice about the array of government payments and services potentially available to them.

Employment and Income Support

1007. The Jobs, Education and Training Program (JET), established in 1989, provides assistance to sole parent income support recipients (sole parent pensioners, carer pensioners, widow B pensioners and certain groups of special beneficiaries) to re-enter the workforce. JET involves the co-ordination of initiatives of the Department of Social Security, the Department of Employment, Education and Training, and the Department of Human Services and Health. It provides access to work oriented counselling, work related training schemes and assists sole parents to find child care while they are training and starting work. The Department of Human Services and Health helps sole parents to gain access to services and arranges temporary, additional child care places when permanent places are not available.

1008. The JET program places special emphasis on helping sole parents make the transition from income support to workforce participation. Child care and assistance with fees are important components of this scheme. The major aim of the program is to link services so as to provide an integrated range of assistance to sole parents who face special barriers in trying to enter or re-enter the workforce. Sole parents participating in the JET program will benefit from an additional $14.7 million over four years from 1995-96 for a further 4,000 temporary child care places a year to meet an increase in demand. This brings the total number of temporary child care places for JET clients to 15,000 places in 1995-96.

1009. The Government also provides social security payments to people who are unable to obtain employment with a view to providing a basic level of security below which no one can involuntarily fall. The Government also operates labour force programs to assist disadvantaged job seekers such as long term unemployed, retrenched workers, migrants, Aboriginal and Torres Strait Islander peoples and disabled persons through job creation schemes, training and retraining.

1010. The Department of Employment Education and Training is also responsible for the operation of the Commonwealth Employment Service which operates on a national basis. This Service assists job seekers to gain suitable employment through the provision of occupational information, employment counselling services and innovative community-based employment programs which focus particularly on the groups of disadvantaged job-seekers mentioned above.

1011. As part of the Commonwealth Employment Service, Youth Access Centres (YACs) provide a range of services to young people. Nationally, there are 99 YACs. The YAC client group includes Youth Training Initiative (YTI) clients. The YTI was introduced in 1985 and assists unemployed 15 to 17 year olds, especially early school leavers, to access education, training or work opportunities and to ensure that they do not become long-term unemployed. The YAC client group also includes other disadvantaged young people aged under 21, with an emphasis on those clients who are homeless, at risk of long term unemployment, Aboriginal or Torres Strait Islanders, from non-English speaking backgrounds, disabled, sole parents, and ex-offenders.

1012. Priority tasks for the YACs are:

- delivery of the YTI to young people aged 15 to 17;
- case management of YTI clients, those who have been YTI clients and remain unemployed and in need of assistance when they turn 18, and 18 to 20 year olds who are homeless or otherwise disadvantaged; and
- the provision of information, advice and referral for young people. This should include identification of high risk clients and assistance to non-case managed clients.

1013. The coordination of youth service delivery by YACs at the local level includes undertaking transitional arrangements for JPET (Jobs Placement and Employment Training) clients, developing and maintaining linkages with other relevant service providers, planning for effective youth service delivery, the development of effective referral mechanisms, exchange of information, cooperation with other youth service providers, production of up-to-date regional youth profiles, including profile of youth service providers, appropriate joint activity, and promotion of DEET services for young people.

1014. Provision of targeted assistance to homeless and at risk secondary students by YACs, on the basis of identified need, and linked to AUSTUDY/ABSTUDY and Students at Risk programs includes the provision of detailed information and linkages with other services.

1015. YACs also act as a lodgement centre for AUSTUDY/ABSTUDY and provide assistance, especially for disadvantaged students, in completing forms and documentation requirements and provide outreach to young people who tend not to access the Commonwealth Employment Service.

1016. A Youth Training Allowance, administered by the Department of Employment, Education and Training, but paid through the Department of Social Security network, is also available. The allowance is available to unemployed people under the age of 18 who are registered at the Commonwealth Employment Service and are undertaking education, training, job search or other employment preparation activity.

Child care

Children's Services Program

1017. The Federal Children's Services Program assists families with dependent children to participate in the workforce and the general community, by ensuring that child care is affordable for low and middle income families and by improving the supply and quality of child care. The availability and affordability of quality child care is crucial for people with family responsibilities who participate or wish to participate in the workforce.

1018. This program is administered by the Family and Children's Services Division of the Department of Human Services and Health and the relevant Branches in the Department's State Offices.

1019. The service types funded under the Children's Services Program are:

- Child Care Centres funded to provide care primarily for children under school age;
- Family DayCare, a network of individuals who provide care and activities for children in their own homes and who are organised and supported by co-ordination units;
- Occasional Care Services to provide care for children of parents who are at home and need to leave them in care for short periods of time;
- Outside School Hours Care services to provide care for primary school age children before and after school and during school holidays;
- Youth Activities Services designed to meet the needs of 11 to 16 year olds living in socially and economically disadvantaged areas;
- Playgroup associations in each State and Territory to assist in establishing playgroups, an important social activity for children of parents who are outside the workforce;
- Multifunctional Children's Services, designed to meet a diverse range of child care needs in a small population. These services are located in rural and remote communities and provide a range of child care options;

- Multifunctional Aboriginal children's services provide a flexible service to meet the social and development needs of Aboriginal and Torres Strait Islander children. MACS offer care for pre-school and school aged children including long day care, outside school hours care, school holiday care and cultural programs;

- Mobile children's services visit remote areas to provide occasional care, school holiday care, playgroups, story telling, games and toy library services. They also provide broader information and support for parents;

- Multipurpose centres provide long daycare, occasional care and outside school hours care in the one location;

- Supplementary services designed to help children with additional needs (children with a disability, children from non-English speaking families and Aboriginal and Torres Strait Islander children) have access to appropriate care in Commonwealth funded child care services; and

- Jobs, Education and Training Program provides additional assistance to sole parents, who are entering or re-entering the workforce, by providing child care and assistance with fees.

Supply

1020. Since 1983, the number of funded child care places has increased more than five times and will continue to grow. The Government has made a commitment to fully meet work-related demand for child care by the year 2000-01 based on a target of 354,000 Federally funded child care places. As part of this commitment the following additional community-based places will be established:

- 12,000 Family Day Care;
- 38,000 Outside School Hours Care; and
- 8,000 Long Day Care.

1021. The Federal Government also has agreements with all States and Territories under the 1992-1996 National Child Care Strategy for cost-sharing of the new child care places through the National Child Care Strategy. Initiatives in the 1995-96 Federal Budget include additional measures to improve the supply of flexible, responsive and more age-appropriate child care places to meet the needs of working families. New Outside School Hours Care places will also be established as part of a pilot program to look at affordability, appropriateness of care and service viability.

Affordability

1022. Government policies keep the cost of child care affordable for low and middle income families. One form of assistance is Childcare Assistance. This is a means-tested payment to help low and middle income families with the cost of their child care in federally funded services. The amount of assistance depends on the family income, the number of dependent children and the number of children in approved day care.

1023. Another important form of assistance is the Childcare Cash Rebate. This rebate has been available since 1 July 1994, and consists of a 30 per cent rebate for all parents who are working, studying or training. It has been paid on the basis that child care is a necessary cost of earning income. For this reason, it is neither means-tested nor restricted to any particular sector of the child care industry. The fact that the assistance is provided in cash is particularly advantageous to parents. The Rebate provides up to $28.80 per week for one child and $62.55 for two or more children. This initiative benefits 230,000 families and has been a great success.

Quality

1024. The Federal Government provides assistance only to child care centres that meet Government licensing standards. State and Territory Governments are responsible for regulating, licensing and monitoring child care centres. This includes inspection of facilities, licensing of centres and certifying that staff hold appropriate child care qualifications. In 1992, all State and Territory Governments agreed on a range of nationally consistent standards for child care centres and that implementation of these standards would occur by 1996. While some regulations will still vary among States, the implementation of the agreed standards will improve the national consistency of standards of care to be met for licensing purposes.

1025. The Federal Government has introduced a National Quality Improvement and Accreditation System for long day care centres to supplement the regulatory arrangements. The system, administered by a ministerially appointed and funded National Accreditation Childcare Council, will help centres and parents to improve the quality of care for children. Centre staff and management can access Federally funded training programs. The system began on 1 January 1994.

Family Support Service Scheme

Special Services

1026. Special Services provide tailored programs to meet the needs of disadvantaged families and children, including Aboriginal and Torres Strait Islander children, those with disabilities and from non-English speaking backgrounds and children living in rural and remote areas. Service types within Special Services include:

- Multifunctional Aboriginal Children's Services;

- mobile children's services and toy libraries;
- Aboriginal and Torres Strait Islander services - playgroups, Outside School Hours Care, Vacation care, enrichment programs and Aboriginal and Torres Strait Islander Child Care Agencies;
- casual ethnic workers pool;
- children's services workers; and
- resource and advisory services.

Supplementary Services Grants

1027. Supplementary Services Grants are provided to assist the integration of children with special and/or additional needs to gain access to appropriate care in mainstream services and to ensure that services operate in a culturally or developmentally appropriate way. The Federal Government in the 1995-96 Budget provided increased funding of $17.2 million over four years to align funding with the growth in child care services.

Program Support

1028. Program Support provides funding for in-service training and management support to enhance the efficiency and skill base of Federally funded children's services and funding for research and special projects.

Youth Activity Services

1029. Youth Activity Services provide structured activities and positive peer supports in an innovative program of after school and vacation care services for children from 11 to 16 years of age.

Other assistance to families

Family Resource Centres

1030. Family Resource Centres operate in areas of economic and locational disadvantage, to support local agencies in the provision of services to families. The primary role of the centres is not to deliver services directly, but to provide resources and support to existing services. The centres do this through co-ordination, research and information dissemination, community education, training and service development. A national evaluation of the Family Resource Centres Program was conducted in 1994. Recommendations which are currently being implemented, focus on standardisation, regionalisation and improved delivery of services.

Role of the Office of Status of Women

1031. The Office of the Status of Women (OSW) does not carry major responsibility for children's matters. It does, however, have a significant input into the development and monitoring of Government policy on child care. In 1989 the OSW published a cost-benefit analysis of employer-provided child care.

Review of children's services legislation

1032. In August 1994 the Australian Law Reform Commission published Child Care for Kids, the report of its review of children's services legislation administered by the Federal Department of Human Services and Health. Sixty-seven recommendations were made in areas which included: principles and objectives, access and equity, information and participation, complaints, special issues relating to family day carers, and quality. Key recommendations were as follows:

- Federal child care legislation should establish key principles for federally funded children's services - equality, accessibility, affordability and equity;
- The legislation should provide that the welfare of the child for whom child care is being or will be provided is to be the paramount consideration in any decision or action taken under or for the purposes of the legislation; and
- The legislation should set out the priorities for the program. (The major priority is to provide child care for children of parents who are working, looking for work, studying or training. However children identified in the government's Social Justice Strategy, such as Aboriginal and Torres Strait Islander children, children from non-English speaking backgrounds and children with a disability, should also have priority.)

1033. The report is currently under Government consideration.

EPAC Task Force on Future Child Care Provision in Australia

1034. On 30 August 1995 the Prime Minister announced that the Economic Planning Advisory Commission (EPAC) would establish a task force to investigate and report on child care provision in Australia. It will investigate and report on the prospective demand for child care, best practice in the provision of child care, and the links between the provision of child care and other children's and family services. The report will assist governments in planning to meet demand for child care in the future, and in designing and implementing the best and most efficient forms of child care. The report is due July 1996.

State and Territory matters

Australian Capital Territory

1035. The Family Services Branch of the Housing and Community Services Bureau regulates the operation of child care facilities in the Australian Capital Territory. The Family Services Branch Children's Day Care Services Section provides that all appropriate measures are taken to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible. Fee relief is provided on a means tested basis to parents to offset the cost of care. The quality of child care facilities is monitored and maintained by inspectors and through the licensing provisions of the Children's Services Act 1986.

1036. The Australian Capital Territory Government is a party to the National Child Care Strategy, and contributes with the Federal Government to vacation care, after school care and long day care. The funding of child care is generally a Federal matter, but the Australian Capital Territory does fund occasional care centres. These centres are funded on the basis that they must provide access to child care for low-income families, and have a discretion as to how this is done.

1037. Five hundred thousand dollars was recently allocated to a Capital Works program to refurbish unused buildings for employer-supported child care. This is intended to provide 125 additional child care places for Australian Capital Territory Government employees and in addition will relieve pressure on other child care centres in the community. Child care facilities are also provided at the two major public hospitals in the Australian Capital Territory, thus ensuring that employees have reasonable access to work based child care services. The Centres are open 12 hours per day and offer a safe, homelike environment for children.

New South Wales

1038. The provisions of Article 18 are implemented by the New South Wales Department of Community Services. The Department provides support services for parents and legal guardians in the performance of their child-rearing responsibilities and administers a funding and licensing scheme for child care services in New South Wales.

1039. The Family Work Program of the Department of Community Services is directed to support parents in their role as caregivers, to ensure the safety and protection of children and to provide appropriate advice and guidance to children. Through the Family Work Program, the Department provides direct services to assist families with identified problems which constitute a threat to their viability or a potential risk to children. The range of services provided includes assessment, counselling, mediation, financial assistance and referral to other suitable agencies. The Department also arranges voluntary foster care for children in situations where the family is temporarily unable to care for them.

Northern Territory

1040. Children's services are provided through the Department of Health and Community Services. They include a range of services designed to support communities and parents and families with their child care responsibilities and promote the optimum development of young children aged up to 12 years. These services are partly supported through the National Child Care Strategy. In recent years, the Department of Health and Community Services has developed an emphasis on remote and rural service development, including those services that are relevant to children. There has been considerable interest and participation from the Aboriginal community in these initiatives, especially in the early child care training provided by the Department. A report has recently been released that brings together all the policies and programs for early child care development in the Aboriginal community. This is part of a larger program to research and develop children's support services in the Aboriginal community, which will form the basis of future policies for the Department of Health and Community Services in this area.

Queensland

1041. The Department of Family Services and Aboriginal and Islander Affairs is responsible for child care services in Queensland. Within the Department, the Office of Child Care and five regional offices work in co-operation to enhance the number, range and quality of child care services in Queensland. The Department has responsibility for the licensing and regulation of prescribed types of care under the Child Care Act 1991 and associated regulations.

1042. Service development is another major function of the Department. Recognising the need for more responsive and integrated quality services, current efforts are directed towards increasing the capacity of child care services to respond to a variety of needs. These include the needs of Aboriginal and Torres Strait Islander families, families from diverse cultural backgrounds, children with disabilities, families in rural and remote localities, parents with regular and irregular work and study patterns and parents at home with young children.

1043. In recent years traditional child care arrangements have been extended to provide a range of service types. These are day care centres, family day care, out of school hours care and vacation care.

1044. New initiatives include the development of Limited Hours Care and innovative services for remote Aboriginal and Torres Strait Islander communities. In addition, the provision of centre-based care is being broadened, in order to encourage the establishment of centres in Colleges of Technical and Further Education, schools and workplaces.

South Australia

1045. The Children's Services Act 1985 deals with the provision of services to children. It covers matters such as the licensing of babysitting agencies and child care centres and the provision of preschool education. Children's services now provide care and educational support for 36,000 children, an increase of more than 14,000 since 1983.

1046. Child care services offered in South Australia are:

- Centre Based Child Care: long day care centres which provide care for children whose parents are either working, seeking work or studying. Some respite care is also provided, and a limited number of centres provide extended hours care (evening or overnight). Fees are charged on a sliding scale which takes into account parental income. The Federal Government is responsible for the fee relief program in child care. There are 153 child care centres.
- Occasional Child Care: Occasional child care is a short term, local child care service for children under school age. The service is generally integrated with other family services. The primary target group is children of parents not in the workforce. Fees are charged on a sliding scale which takes into account parental incomes. There are 31 services providing occasional child care.
- Family Day Care: Family Day Care is a service in which child care is offered in the homes of approved care providers. A flexible range of care options for families is available, including day care on a full-time or occasional basis, out of school hours care and emergency or overnight care. The service caters for young children of preschool and primary school age, and priority is given to those whose parents are working, seeking work or studying. Fees are charged on a sliding scale which takes into account parental income. There are 3,234 places for family day care.
- Out of School Hours Care: Out of school hours care programs are designed to offer quality care and recreational activities to school aged children before and after school. Most programs are run in schools.
- Vacation Care: Vacation Care programs are provided for primary school children during school holidays and are usually held in schools, community centres or child care centres. Two hundred and thirty-four centres provide out of school and vacation care.

Tasmania

1047. In Tasmania, the State Government provides a range of family support services. The goal of the Individual Children and Family Services program within the Department of Community Services is to ensure that individuals, children and families are able to function in society to the best of their ability and that family relationships both within the immediate family unit and within the broader family are preserved, strengthened and where possible, restored. The objective of the Community Support sub-program is to ensure that individuals and families have the opportunity for full integration into community life including employment, education and other opportunities for personal development through the provision of information, skills and support services.

Victoria

1048. The Victorian Government's Department of Health and Community Services is responsible for a major program of service development and the regulation of service standards through the licensing of child care services and grant eligibility requirements.

1049. The Victorian Government aims to ensure that child care services are accessible, affordable, relevant to need, and of good quality. The Victorian Government is responsible for a major program of service development and the regulation of service standards through the licensing of child care services and grant eligibility requirements. The provision of child care services for the children of working parents forms a major focus of Victorian activity.

Western Australia

1050. Western Australia has been involved in cost sharing arrangements for child care with the Federal Government since 1983. The Department for Community Development also funds a Family Centre Program which provides developmentally appropriate early childhood programs.

1051. The Department for Community Development has responsibility for licensing, through the Child Care Services Board, the following range of child care services:

- Long Day Care Centres;
- Occasional Care Centres;
- Family Day Caregivers (Schemes);
- Family Day Care (Private);

- Family Centres;
- Mobile Occasional Care Services;
- Long Day/Occasional Care Services;
- Multifunctional Aboriginal service; and
- Multifunctional Services.

1052. In addition, the Department provides support and resources to the above services, to vacation care and outside school hours care services and to four year old playgroups. This support is provided largely at the local level through Regional Children's Services Officers.

1053. Centre based long day care services care mainly for under school age children. Centres may be located in residential areas, close to work places or on major transport routes and usually cater for 35 to 40 children at one time. Care is mainly work-related and provided on a regular full-time or part-time basis. Places are allocated according to priority of access guidelines.

1054. Occasional care services also provide care for under school age children. These services cater mainly for the needs of families who require short term care for their children. The services provide children with the opportunity for developmental and social activities and parents with the opportunity to pursue their own interests or simply have some time away from their children.

1055. Family day care provides child care in the caregiver's own home for up to four children under school age. The caregivers can either operate privately or as part of a Family Day Care Scheme.

1056. Mobile occasional care services cater for the needs of families who require short term care for their children, but are flexible in the amount of care provided and the place of provision. Generally smaller sub-services are located in different towns or suburbs as part of a total service.

1057. Outside school hours care services provide care for school aged children before and after school during the school term. Vacation care services provide supervised play and recreational activities for primary school aged children of working/studying parents during school holidays. These services usually make use of established facilities such as schools, community halls and recreation centres.

1058. Multifunctional Aboriginal Children's Services are designed to help Aboriginal communities with child care needs. These services can include different types of child care depending on the community needs (eg playgroups, long day care, occasional care, outside school hours care, vacation care).

1059. Discipline in child care services is regulated by the Community Services (Child Care) Regulations 1988. The relevant rule reads:

> In the discipline or control of behaviour of children enrolled in a child care service the licensee shall ensure that:
>
> a) every child is given positive guidance directed towards acceptable behaviour with praise freely given and blame and admonition kept to a practicable minimum;
>
> b) no child is subjected to any form of corporal punishment, punishment by solitary confinement, immobilisation or other humiliating or frightening punishment; and
>
> c) no child is isolated for any reason other than illness or accident for any period exceeding 3 months.

1060. The Act further specifies that any child isolated under subregulation (c) shall be kept in the line of vision of a staff member.

(e) Standard of living (Article 27, paragraphs 1–3)

Article 27

1. *States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral, and social development.*

2. *The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.*

3. *States Parties, in accordance with the national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.*

Federal matters

The Youth Social Justice Strategy

1061. In 1989 the Human Rights and Equal Opportunity Commission issued its report of the National Inquiry into Homeless Children, Our Homeless Children. The report highlighted the serious problems faced by homeless young people, and addressed the particular risk they faced of becoming permanently alienated from mainstream economic life and developing long-term dependency on welfare, with consequent costs both to themselves and society. The report also confirmed the need for an integrated approach for the most disadvantaged and the need for State and Federal Governments and the community generally to cooperate in developing a comprehensive response to the problems of youth homelessness.

1062. Federal and State Welfare Ministers formally considered the recommendations of the report in June 1989, and subsequently announced the Youth Social Justice Strategy (YSJS). The Strategy was introduced for an initial four-year period to provide a special focus, in the Federal Government's broader social justice strategy, on improving opportunities for young people. A number of existing programs were subsequently expanded or adapted to reflect the needs of youth more appropriately. The strategy included a comprehensive package of initiatives for disadvantaged young people, covering accommodation for the homeless, income support, labour market assistance, education, family reconciliation services, health and access services.

1063. The strategy was recently evaluated and ways to improve the level and type of assistance to young people, identified. Effective initiatives of the Youth Social Justice Strategy will be continued, but with a greater emphasis on the needs of four groups identified as particularly disadvantaged and as receiving inadequate support from the existing strategy: homeless young people, young offenders, Aboriginal and Torres Strait Islander young people, and disadvantaged young people from non-English-speaking backgrounds.

1064. The Federal Government introduced a Homeless and At Risk Youth Action Strategy with a specific purpose of trialing innovative approaches to providing assistance to this group.

1065. Federal and State Government Youth Social Justice Strategy funds totalling $11 million, along with some 120 supported accommodation services were transferred to the Supported Accommodation Assistance Program (SAAP) from 1 July 1995. This is in addition to the 1995-1996 allocation for SAAP which is $197.5 million, of which $110.6 million is Federal funds. This transfer of funds and services will provide former YSJS services with access to the proposed SAAP reforms, primarily aimed at improving client outcomes, as well as being part of a related mainstream program.

1066. SAAP currently funds about 1,600 services which accommodate between 11,000 and 12,000 people each night. Total funding for the programs in 1993-94 was $183 million comprising $103 million from the Federal Government and $80 million from the States. Some examples of SAAP initiatives in the States appear under State matters below.

Housing

1067. The Federal Government is proceeding with the development of a National Youth Housing Strategy, which is expected to set clear goals and objectives for the improvement of housing options for young people on low incomes. The strategy will recommend ways to improve the targeting and co-ordination of youth housing services. The availability, affordability and appropriateness of public housing and young people's interaction with the private rental sector will also be examined. The strategy covers young people aged between 15 and 35 years.

1068. Public housing is provided under the mainstream public housing program which is cost-shared between Federal, State and Territory Governments. Housing allocation is made on the basis of need and youth are an identified group for assistance under this program. However, public housing is delivered through State and Territory Government housing authorities, which have differing eligibility guidelines and in some cases these can effectively exclude young people.

1069. A number of projects specifically targeted at young people have been funded under the Community Housing Program, and its predecessor, the Local Government and Community Housing Program, which funds community-based housing projects.

1070. The Supported Accommodation Assistance Program (SAAP) is a joint Federal State program which funds crisis accommodation, a range of other accommodation options and related support services for homeless people. The aim of the program is to assist clients to move towards independent living, or a more stable lifestyle as soon as possible. The largest target groups in the program are homeless young people and women and children escaping domestic violence.

1071. New program priorities identified which affect children and adolescents include:

- providing an environment appropriate to the needs of young people using SAAP services, whether they are children accompanying parents or homeless young people;

- improving the availability of accommodation options for those who have achieved independence and are ready to discontinue SAAP services, which is of particular importance for young homeless people, and women and children escaping domestic violence;
- providing counselling and support for children who have witnessed or experienced domestic violence; and
- becoming more responsive to the needs of particular cultural groups so that services are sensitive to their particular needs.

1072. Funding allocated under the Youth Social Justice Strategy for accommodation and support initiatives has enabled a substantial increase in the range of medium-term to long-term accommodation options available and the development of innovative support services for homeless young people. The strategy especially targets disadvantaged groups of homeless youth, including Aboriginal and Torres Strait Islander people, people from non-English-speaking backgrounds and the chronically homeless, including young people with complex problems who are excluded from other crisis services.

1073. A Federal Government pilot program, Job Placement and Employment Training Program has provided employment and training support specifically designed to increase the opportunities, skills and independence of homeless young people, aged 15 to 19 years. The Program was established in 1993 and the pilot phase finished on 30 June 1995. This support will, from 1 July 1995, be provided under the arrangements introduced in the Government's White Paper on Employment, Working Nation.

Health

1074. The Innovative Health Services for Homeless Youth Program (IHSHY) is the health component of the Federal Government's Youth Social Justice Strategy. It was introduced as a pilot program in 1989, following the release of the national report Our Homeless Children which found that homeless young people, inter alia, exhibit chronic health problems but are reluctant to seek treatment through mainstream services which they regard as judgemental and unsympathetic to their needs and life situations.

1075. This program provides matched Federal/State funding to develop and implement innovative primary health care services for homeless and otherwise at risk youth. In 1994-95, $2,289,280 in Federal funds was distributed to 45 services throughout the country.

1076. Services, which include stand alone youth health centres and outreach mobile health units, report upwards of 30,000 consultations per year. Many offer general health services while others specialise in issues such as dental health, mental health, alcohol and drug abuse and Aboriginal and Torres Strait Islander health.

1077. Funded services usually are closely associated with, or are co-located with, other youth services such as day-centres or supported accommodation.

State and Territory matters

Australian Capital Territory

1078. The right of the child to an adequate standard of living for its physical, mental, spiritual, moral and social development is enshrined in section 5 of the Children's Services Act 1986.

1079. Housing assistance and services are provided in accordance with the Housing Assistance Act 1987 and the 1989 Commonwealth/State Housing Agreement. The objectives of the Australian Capital Territory Housing program are to enable the Australian Capital Territory community to obtain appropriate and affordable housing by providing a range of housing assistance programs with a focus on people who cannot afford housing in the private sector and people with special needs.

1080. A Trust provides housing assistance through public rental housing, rent relief for private rental tenants, home loans, mortgage relief, emergency housing, supported accommodation and community-based housing assistance.

1081. A range of community housing services is also provided to single people, family units, community groups and people with special needs through a range of housing assistance and support programs including included Supported Accommodation Assistance programs, the Crisis Accommodation Program, the Community Housing Program, the Community Organisations Rental Housing Assistance Program and the Single Share Accommodation Scheme.

1082. Examples of housing programs during 1993-94 included:

- $6.053 million was provided to fund 30 services under the Supported Accommodation Assistance Program to assist people who were homeless and in crisis;
- $320,000 was provided under the Youth Social Justice Strategy to fund young people with complex lifestyle problems;
- $835,000 was available for the purchase, extension or upgrading of properties housing people who received SAAP services; and
- the piloting of a Home Access Program under which four people with intellectual disabilities were housed. (The program offered a self-supporting shared

accommodation arrangement using a mix of home purchase and grant funds linked with support services).

New South Wales

1083. The Department of Community Services administers programs which provide material assistance and support programs, in accordance with Article 27(3). These include financial assistance through the Family Work Program and crisis accommodation through the supported accommodation program. Legislation relating to assistance and support for families and homeless youth includes the Children (Care and Protection) Act 1987.

1084. The Department of Housing provides subsidised housing for families in need. Families on specified incomes and who meet other requirements are eligible for public housing. Individuals or groups of people under 18 years old may be eligible in certain circumstances, but they must be able to demonstrate adequate living skills or have access to appropriate community support services. Community housing programs offer short and medium term housing assistance and are particularly suited for people on low incomes who are unable to find suitable accommodation on the private market or for those for whom independent housing is unsuitable.

1085. Funds are available under the Federal/State Housing Agreement to provide supported accommodation for people who are homeless and in crisis including young people aged 16 and over. One hundred and twenty youth projects are currently funded under the Supported Accommodation Assistance Program, including crisis youth refuges, medium and long term accommodation and housing support workers as part of a range of new or expanded projects for homeless young people in crisis. Further funds have been allocated to upgrade a crisis youth refuge in inner Sydney to enhance the assessment of young people's needs and to improve the response to those needs. Five new medium or long term youth accommodation services have been funded to improve longer term accommodation options for young people.

1086. A Government priority has been the development of an Overnight Accommodation Service for chronically homeless young people in the inner city. This service is a 12 month pilot project based on a joint Federal and State Governments agreement reached in June 1990. Further developmental work is under way to ensure that homeless young people have immediate access to accommodation and basic health care.

1087. Under the Federal/State Housing Agreement, under the Housing for Aboriginals program, homes for Aboriginal people are built on land owned by the Department of Housing or are purchased in the open market.

1088. The Children (Care and Protection) Act 1987 requires that all residential centres which care for children under 16 years and all fostering agencies are licensed to operate by the Department of Community Services. Regulations define the minimum standards of care that must be provided.

Northern Territory

1089. The right of the child to an adequate standard of living for his or her physical, mental, spiritual, moral and social development is indirectly enforced by various provisions of the Community Welfare Act 1983. The Family, Youth and Children's Services Division of the Department of Health and Community Services, in its policy document on Principles of Substitute Care, recognises that:

> Children have a right to enjoy parental care and protection, to have their welfare safeguarded, and to grow up within their own culture. The family has the primary responsibility for the maintenance, protection, nurturing and education of their children.

Victoria

1090. The goal of the Department of Planning and Housing is to provide customer-orientated and efficient urban and regional planning and construction services and affordable housing choices for Victorians. A Youth Rents Formula applies to people under the age of 18 and is designed to allow for the relatively low statutory incomes of this group. The Government currently provides approximately 62,500 public housing units. An estimated 72 per cent of these units are rented to households with children. Of all people assisted as members of families or shared households, approximately 23 per cent are aged between 12 and 25.

1091. Further to the direct provision of accommodation, the Government through the Department of Planning and Housing provides a number of other housing related services. These include financial assistance to help people meet the cost of establishing themselves in the private rental sector, and funding of community based services which provide housing information, advice and referral to people who may be in housing difficulty. Thirty-two per cent of the clients of funded housing information services are aged 16 to 25, with the majority of the remaining clients being families with children.

1092. Through the Department of Planning and Housing the Government also assists children as members of families by helping low to middle income Victorians gain access to the security of home ownership. The Department currently assists 48,000 households through various home ownership assistance programs. Among these programs are deposit assistance grants, low start loans for clients unable to access finance through the private sector, a shared home ownership scheme with Housing and Construction Victoria as the co-owner, and assistance for home owners experiencing difficulties meeting mortgage repayments.

1093. The Department of Planning and Housing convenes two Ministerial Committees which provide advice to the Minister on housing issues relating to homelessness and women. Among the many issues addressed by the committees are the problems faced by young women in accessing safe and affordable housing; the difficulties faced by women, particularly those with children, seeking private rental accommodation; the impact of public housing rental arrears, particularly on families; and homelessness.

Western Australia

1094. The Western Australian Government addresses its responsibilities under Article 27 through three main avenues: Concessions, Family Crisis Program and Financial Counselling Services.

1095. Concessions provide ongoing support to people on low incomes via subsidies and discounts on the cost of essential goods and services such as energy, water and transport. Families with dependants have predominantly been the main beneficiaries of recent State Government concessions initiatives. The Department of Community Development is directly responsible for administering two concessions but has an important role in monitoring and providing advice to the Government on concessions policy.

1096. The Family Crisis Program aims to assist people in the community to overcome or minimise the effects of short-term financial emergencies which may result in serious threats to individuals or family units. Under the program, clients are referred for financial counselling and a personal case plan is prepared. Financial assistance may be provided as part of a case plan.

1097. Financial Counselling is provided through State funding to non-Government agencies for the provision of budgeting advice, renegotiating client debts, advocacy on behalf of clients with public sector organisations and private firms. These services aim to alleviate the impact of poverty in the community.

G. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

(a) Education, including vocational training and guidance (Article 28)

Article 28

1. *States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:*

    (a) *Make primary education compulsory and available free to all;*

    (b) *Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;*

    (c) *Make higher education accessible to all on the basis of capacity by every appropriate means;*

    (d) *Make educational and vocational information and guidance available and accessible to all children;*

    (e) *Take measures to encourage regular attendance at schools and the reduction of drop-out rates.*

2. *States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.*

3. *States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.*

Federal matters

1098. Although under Australia's Federal arrangements, primary, secondary and vocational education is primarily the responsibility of the State and Territory Governments, the Federal Government exercises strong leadership through its substantial funding in these sectors. The Federal Government provides capital and recurrent funding, more than $3 billion annually, to State and Territory Governments and to non-government schools (as mentioned in Part D (e), Civil rights and freedoms, Freedom of thought, conscience and religion, above). In the last decade the retention rates of school starters to year 12 have radically improved: from 36 per cent in 1982 to 75 per cent in 1994. The Federal Government is also committed to ensuring young people leaving school have a wide range of choices in education and training, including university, full-time vocational training, or structured work-based training. The Federal Government also plays an important role in addressing issues of national concern in education and in providing leadership in determining national goals and the means to achieve them. (See Part G (b), Education, leisure and cultural activities, Aims of education, below.)

Education Network Australia

1099. Developments in information technology offer unprecedented opportunities to improve the delivery of educational services in Australia. Australian Governments are in the process of making significant investment in the establishment of the necessary infrastructure to take advantage of these opportunities. The Federal Government and the States and Territories have agreed on a major initiative, the establishment of a comprehensive education network service, Education Network Australia (EdNA), which will deliver educational services and products across the nation and contain costs of accessing interactive information networks. The EdNA initiative forms part of the overall national strategy announced by the Prime Minister on 6 April 1995 to ensure that Australian children are well placed to take advantage of the opportunities offered by the development of the so called 'information super highway'.

Income support

1100. The Federal Government's system of income support has two goals. The first is to ensure equal educational opportunities for students in need. Students in need have been identified as students who are financially disadvantaged, of Aboriginal or Torres Strait Islander origin, geographically isolated, or who have disabilities. In addition, in its response in 1994 to a report by the Human Rights and Equal Opportunity Commission, A Call for Recognition, the Federal Government has recommended that income support which is comparable to that granted to Aboriginal and Torres Strait Islander students also be granted to Australian South Sea Islanders. (Further reference to the Commission's report is found in Part H(d), Special protection measures, Children belonging to a minority or an indigenous group.)

1101. A second goal of income support is to encourage young Australians to complete their secondary schooling and go on to further studies.

1102. Income support is provided mainly through AUSTUDY, ABSTUDY, and the Assistance for Isolated Children schemes. Both AUSTUDY and ABSTUDY apply to secondary students and to students participating in higher education. Since 1983 the number of students in receipt of financial assistance has increased five times such that in 1995 there are more than half a million students in receipt of income support.

AUSTUDY

1103. AUSTUDY provides financial assistance to students who are 16 years of age and over (and in some cases to students who are over the legal school leaving age in each State or Territory) and who meet prescribed criteria. To be eligible for AUSTUDY, students must meet academic requirements and be subject to income and assets testing. Income and assets tests are applied to the student and the students' parents, unless the student meets the independent criteria in which case the means tests are applied to the student and the student's spouse. The relevant legislation is the Student and Youth Assistance Act 1973 and AUSTUDY Regulations. In 1993/94, 479,921 students received AUSTUDY. Total expenditure in that year on allowances amounted to $1,465.3 million.

Assistance for Isolated Children

1104. The Assistance for Isolated Children scheme aims to overcome, through the provision of financial support, financial barriers to participation in primary or secondary education for students who are geographically isolated or have a medical condition, special education need or disability. The scheme financially helps families whose children must live away from home to attend school, study by correspondence or who live in a second family home to go to school. About 13,000 students were assisted under the Assistance for Isolated Children scheme in 1993-94 at a cost of $24.3 million.

National Equity Program for Schools (NEPS)

1105. Through NEPS the Federal Government encourages a focus on the particular needs of children facing some sort of educational disadvantage such as poverty, language, socio-economic circumstances, geographic isolation, location in rural areas, disability or Aboriginality.

1106. As well as leadership in the area of equity in educational outcomes, NEPS provides substantial financial support to government and non-government education authorities, while giving them flexibility in determining how funds are allocated at the level of the school or individual student. The framework for NEPS was incorporated in the States Grants (Primary and Secondary Education Assistance) Act 1992 and was fully implemented in 1994.

1107. NEPS programs are listed below in relation to the relevant Article of the Convention. Programs that aim to fulfil Australia's obligations under Article 28 (b) of the Convention are listed first.

The English as a Second Language Program

1108. The English as a Second Language Program is a key part of the NEPS, and plays a significant role in improving educational opportunity, outcomes and participation in society for students with minimal or no English language skills. The students may be both newly arrived in Australia or permanently resident and participating in mainstream education. The program aims to develop their English language competencies and help them in mainstream education activities. As well as providing services to students and teachers, the program provides direct financial assistance to newly arrived students who are undertaking a specifically organised program of English language instruction. In 1994, a grant of $2,722 per student was provided.

The Disadvantaged Schools Component

1109. The Federal Government has long recognised the educational impact of socio-economic circumstances, and provides funding of around $54 million for Government schools and $9 million for non-government schools annually through the Disadvantaged Schools Component of the NEPS.

The Country Areas General component

1110. Again, the Federal Government acknowledges the effect of geographic isolation on the educational participation and learning outcomes of young people who, because of their location, have inequitable access to and participation in the social, cultural and educational experiences which result in quality education outcomes. The Country Areas Component of NEPS provides around $15 million annually to assist parents, administrators, teacher and others to work co-operatively to improve delivery of services to students in schools in declared country areas.

The Special Education Component

1111. The Special Education Component of NEPS aims to improve the educational participation and outcomes of children with disabilities and children living in residential care, by providing financial support to education authorities and non-Government voluntary and community agencies. The component aims to improve the quality and coverage of educational services, and to promote the integration of children with disabilities into mainstream education. The total amount allocated in 1994 to this program was $68.7 million.

The Students with Disabilities Component

1112. The integration of students with disabilities into regular classrooms is a Federal Government priority and through the Students with Disabilities Component it provides incentives to schools to provide access to students with disabilities. Under the component, eligible students in Government schools with a disability attract an additional 20 per cent loading on the basic level of funding per student which is incorporated into general recurrent grants. Eligible students in non-government schools also receive supplementary funding. In 1994, the allocation to this program was $7.6 million.

The Transition Support Component

1113. This is a recent initiative of the Federal Government which recognises the legitimate expectations of young people with disabilities to find a place in the workplace. This program aims to assist the transition of students with disabilities from mainstream schooling to further education, employment and adult life. It works principally by supporting the employment of 'school transition officers' based at schools or clusters of schools.

Students At Risk

1114. The changing nature of the workplace has meant young people are now required to gain more skills than ever before. Fundamental to the development of flexible skills is an education up to year 12 or its equivalent, and the Federal

Government has encouraged and supported a growth in year 12 retention rates. This program aims to identify students in Government and non-government schools who are most at risk of not completing their secondary schooling. Particular attention is given to the needs of:

- students experiencing homelessness, family dislocation, itinerancy, truancy, substance abuse, violence or abuse;
- Aboriginal and Torres Strait Islander students, students from non-English speaking backgrounds, boys from socio-economically disadvantaged backgrounds, girls and students with a disability;
- young offenders; and
- re-entry students not aiming at tertiary entrance in the first instance, but who may go on to further training or education.

1115. The program supports a range of school-based projects to encourage at risk students to continue their schooling. Funding for the program in 1995 is $7 million.

Assistance for Aboriginal and Torres Strait Islander people

1116. This section deals with programs for general educational and vocational assistance to Aboriginal and Torres Strait Islanders. Relevant language programs are discussed in Part H (d), Special protection measures, Children belonging to a minority or an indigenous group, below.

1117. The general development and education of Aboriginal and Torres Strait Islander children can be affected by a number of factors. These include a higher than average level of ill health, separations from the family unit and remoteness from population centres. School retention rates for Aboriginal and Torres Strait Islander children, while improving, are significantly lower than the general population (see table G1).

1118. Prior to the introduction of the National Aboriginal and Torres Strait Islander Education Policy (AEP) numerous reviews, inquiries and consultations demonstrated that Aboriginal and Torres Strait Islander people place a high priority on education. They want for themselves and their children no less than that afforded to other Australians. They expect that educational processes should lead them to acquire the knowledge and skills necessary to realise their individual potential. They look to education as a means of moving out of poverty and dependence on welfare, enabling them to earn income through employment or enterprise, and to manage the development of their communities.

1119. To redress the educational disadvantage suffered by Aboriginal and Torres Strait Islander children the Federal Government established a taskforce to examine the issue. In 1988 the taskforce reported the need to develop a comprehensive and co-ordinated National Aboriginal and Torres Strait Islander Education policy.

National Aboriginal Education Policy (AEP)

1120. The AEP was developed in co-ordination with all State and Territory Governments and came into operation in January 1990. Its objective is to improve the availability, responsiveness and effectiveness of educational services as a means of achieving equity of access to and participation in education, and equitable and appropriate educational outcomes for Aboriginal and Torres Strait Islander peoples which is equal to that of all other Australians by the year 2000. The policy is based on four long term objectives, namely:

- ensuring Aboriginal involvement in decision making about education;
- providing equal access to education services;
- raising the rates of educational participation to those of all Australians; and
- achieving equitable and appropriate education outcomes.

1121. Funds for the AEP are provided under the Aboriginal Education (Supplementary Assistance) Act 1989.

1122. The long-term objectives are the basis for the 21 national goals of the policy which cross all educational sectors from Pre-School, Schooling, Vocational Education and Training and Higher Education. The four major objectives in the schooling sector are :

- to increase Aboriginal participation and educational outcomes;
- to strengthen Aboriginal perspectives across the curriculum;
- to improve the employment and specialist training opportunities for Aboriginal people; and
- to enhance consultation and liaison with the Aboriginal community.

1123. In each State and Territory a Strategic Planning and Monitoring Group has been formed to oversee the development and implementation of the Aboriginal Education Strategic and Operational Plans.

1124. After three years of the AEP the Federal Government established a Reference Group to oversee a National Review of Education for Aboriginal and Torres Strait Islander Peoples. The Review found that despite encouraging improvements in the

Aboriginal and Torres Strait Islander education since 1990, Australia's indigenous people are still the most educationally disadvantaged group in the country.

1125. In September 1995 the Federal Government formally released its Response to the Review of Education for Aboriginal and Torres Strait Islander Peoples and committed an additional $142.78 million over the next four years. Also the Federal, State and Territory Governments have now established a joint working group to further develop a national strategy for indigenous eduction with the goal of achieving equity in education for Aboriginal and Torres Strait Islander peoples by the year 2001.

1126. In May 1995 the Ministerial Council on Education, Employment Training and Youth Affairs (MCEETYA) reaffirmed the commitment of all Australian Governments to the AEP and endorsed State and Territory Ministers' determination to improve indigenous education outcomes.

1127. The following programs contribute to the implementation of the Aboriginal Education Policy.

Aboriginal Education Strategic Initiatives Program (AESIP)

1128. Under this program, funds are provided on a triennial basis to State and Territory Governments to supplement mainstream education funding according to priorities established in State and Territory Strategic and Operational Plans. The central plank of the Federal Government's reforms, arising out of the 1995 review, provides funds for a restructured AESIP from 1997 onwards. The program will be separated into two elements. The first will provide per capita recurrent funding to all eligible providers and the second, additional funds for Strategic Results Projects. Federal Government funds will be provided under the restructured program in return for improved educational outcomes of Aboriginal and Torres Strait Islander people.

1129. Examples of services provided in State and Territories schools for Aboriginals and Torres Strait Islanders groups and their families through this program include:

- the employment of Aboriginal and Torres Strait Islander people in the pre-school and schooling sectors such as Home-School Liaison Officers. The Home-School Liaison service is open to all Aboriginal and Torres Strait Islanders and provides a link between the students, their families and the education system;
- Aboriginal and Islander Education workers - AEWs provide support in the form of practical strategies to improve students' access to education and to provide a focus for cultural programs for both Aboriginal and non-Aboriginal students;
- Aboriginal and Torres Strait Islander Studies in the curriculum ensuring that Indigenous studies can be taught across the curriculum for all Australian children; and

- professional Development Programs for teachers of Aboriginal and Torres Strait Islander students about their learning styles and appropriate teaching strategies they should adopt so that students have more positive learning experiences.

1130. The Federal Government is continuing its support for the Recommendations of the Royal Commission into Aboriginal Deaths in Custody. There has been an increase in Aboriginal and Torres Strait Islander education workers and expansion of pre-school services by more than 1,200 places since 1994.

1131. The Royal Commission is discussed in more detail in Part H (b), Special protection measures, Children in conflict with the law.

Aboriginal Education Direct Assistance (AEDA)

1132. The Aboriginal Education Direct Assistance (AEDA) Program consists of three programs titled Aboriginal Student Support and Parent Awareness (ASSPA), Aboriginal Tutorial Assistance Scheme (ATAS) and Vocational and Guidance Assistance Scheme (VEGAS). Total funding for the AEDA Program in 1994-95 was $43.1 million. In 1995-96 it is estimated to be $48.9 million.

- ASSPA is designed to increase Aboriginal participation rates by involving the parents of Aboriginal students in the school decision-making process.
- ATAS provides specific support for learning enhancements. It provides tutorial assistance, funds Homework centres and supports and encourages success in primary, secondary, post secondary and tertiary studies.
- VEGAS provides advice and information for Aboriginal and Torres Strait Islander students on educational and career opportunities. Motivational activities provided by this program encourage both primary and secondary students to continue in education and to make informed career choices.

ABSTUDY

1133. ABSTUDY encourages Aboriginal and Torres Strait Islander people to take full advantage of the educational opportunities offered to them. The Scheme promotes equality of educational opportunities and aims to improve educational outcomes. ABSTUDY provides income support and/or ancillary allowances to all eligible Aboriginal and Torres Strait Islander students. Total funding for ABSTUDY was $114.3 million in 1994-95. In 1995-96 it is estimated to be $122 million.

Aboriginal Employment and Training Assistance

1134. Aboriginal Employment and Training Assistance aims to increase the skills and employment level of Aboriginal and Torres Strait Islander people by providing:

- training under the Direct Assistance Program (administered by the Commonwealth Employment Service); and
- employment opportunities which have been negotiated by the Federal Government with employers.

Training for Aborigines and Torres Strait Islanders Program (TAP)

1135. This program aims to increase the skills and employment level of Aboriginals and Torres Strait Islanders by providing training and employment opportunities through the delivery of TAP's three direct assistance elements which are Skills Development, Transition Assistance and Formal Training.

1136. Skills Development provides opportunities which include employment based training and supervision with specific emphasis on industry-accredited training such as apprenticeships and traineeships. Transition Assistance provides employers with the capacity to help Aboriginals and Torres Strait Islanders to overcome barriers to employment. This may include work experience which allows the person to obtain a subsidised employer placement which will assist them to make a decision regarding their future employment. Formal Training provides Aboriginals and Torres Strait Islanders with formal, institution based training that is pre-vocational or job-specific.

1137. In the 1995 Budget the Federal Government increased the number of places allocated specifically to Aboriginals and Torres Strait Islanders in mainstream labour market programs to 26,000 places in 1995-96.

Aboriginal Overseas Study Awards Scheme

1138. The Scheme provided opportunities for Aboriginal peoples and Torres Strait Islanders to increase their skills and experience overseas. The awards were granted to individuals and groups to see how similar communities overseas are developing. The Scheme was discontinued from mid-1995, but Aboriginal peoples and Torres Strait Islanders can still apply for overseas study experience through scholarship schemes of general application.

Vocational education and training

1139. Australia has one of the highest rates of labour force participation by young people aged 15 to 24 in the Organisation for Economic Cooperation and Development. The Federal Government is concerned to provide young people with sufficient opportunities to pursue education and training during and after school.

1140. In the 1980s, it was generally recognised that the apprenticeship and the traineeship systems were perceived to be too rigid. They did not allow young people an effective transition from school to work and restricted the opportunity for young people to gain structured training in all industries. As a result, the Federal, State and Territory Governments have embarked on a program of reform to the current system of structured entry-level training in Australia - the Australian Vocational Training System (AVTS). The AVTS involved extensive consultations with industry, unions, training providers and the community.

1141. The AVTS recognises the convergence that has occurred between work and education, as demonstrated in the growing proportion of jobs requiring thinking, learning and analytical skills; the decrease in full-time teenage employment opportunities; and the experience that many students learn best when taught in a practical real life setting. The AVTS is based upon the competency-based approach to training which focuses on what skills a person can demonstrate, rather than length of time in the work place or in training.

1142. The objective of all Australian Governments is that by the year 2001, 95 per cent of 19 year olds will have completed year 12 or an initial post-school qualification, or be participating in formally recognised education and training. To enable this, the Federal Government has increased its funding of vocational training by 55 per cent since 1992.

1143. The three key elements to the new strategy for building the skills of young people are listed below.

Closer integration of general and vocational education

1144. All States and Territories have agreed to integrate vocational education into the secondary curriculum. That is, the artificial distinction between the general education offered by schools and the training offered by industry is breaking down. For example, under the AVTS, schools are delivering programs that will result in a vocational qualification or credit towards a qualification. These programs feature structured vocational placements in industry. All States and Territories (under a Federal Government funded program) are also piloting the development in students of key competencies that are essential for work and for life in general. The key competencies apply to vocational and general education. They are collecting, analysing and organising information, communicating ideas and information; planning and organising activities; working with others and in teams; using mathematical ideas and techniques; solving problems; using technology; and understanding cultural diversity.

1145. In addition, the Federal Government has established the Australian Student Traineeship Foundation. The Australian Student Traineeship Foundation is responsible for developing and supporting school-industry programs which allow students in years 11 and 12 to combine their school-based studies with work experience and off-the-job training. In this way apprenticeship and traineeship qualifications may be achieved in a shorter period after leaving school.

Expanding entry level training places

1146. Since 1989, the Federal Government has more than doubled its expenditure on vocational education and training: from $344 million to $780 million. As a result of the agreement with the States and Territories to establish the Australian National Training Authority (ANTA), the Federal Government will provide $1.5 billion in growth funding over the period 1993 to 1997. Much of this funding will go to Technical and Further Education (TAFE) institutions, the major provider of vocational educational and training, to support its changing role and to ensure that Australia has an accessible high quality vocational education and training system.

1147. TAFE is providing for formal training for apprenticeships and traineeships in an expanding range of industries and occupations. In addition, it is offering alternative ways of obtaining training qualifications involving full time study. TAFE is also forming closer partnerships with both schools and industry.

1148. The Government is now seeking the cooperation of industry, unions and the States and Territories to expand the entry level training system by 50,000 places. There have been promising developments and a positive commitment by industry to achieving this aim. The body tasked with facilitating this process is the National Employment and Training Taskforce (NETTFORCE). To assist with this task NETTFORCE is establishing a network of Industry Companies to broker and market traineeships in particular industries. By June 1995, 23 Companies were operational, with a total of 28 to be established by the end of 1995. In 1994 apprenticeships and traineeship commencements as a proportion of the 15 to 19 year old population were higher than that achieved since 1965.

Youth Training Initiative

1149. Operating since 1995, the Youth Training Initiative (YTI) assists unemployed 15 to 17 year olds, especially early school leavers, to access education, training or work opportunities. The initiative provides:

- case management, so that unemployed people under the age of 18 years will have the assistance of a specific case manager in their search for a suitable work, training or education opportunities. Clients will be eligible for case management 13 weeks after registering as unemployed (with earlier case management assistance for the 'high risk' group);
- a labour market or vocational training place and job search assistance for those who remain unemployed six months after registering (with earlier assistance for the 'high risk' group); and
- new income support arrangements (called the Youth Training Allowance) which will provide support for young people undertaking approved education, training or job search activities.

1150. The Federal Government has allocated $660 million over four years to the YTI. This initiative represents a major expansion in the labour market program assistance available to young people.

Job Guarantee program

1151. In September 1995 the Federal Minister for Employment, Education and Training, Mr Crean, announced $2 million to immediately fund a program under Working Nation to enable schools to offer a 'job guarantee' for students who successfully complete their vocational studies in the final two years of high school. This program is in response to concerns raised by young people that even with training and work experience, the first full-time job is often the hardest for school leavers to get. This is especially so in areas of high unemployment.

1152. Mr Crean said that there was an opportunity to build on the employment placement broker arrangements developed under the One Nation Local Industry Education Network Committees Program pilots and the work experience placements fostered under the Australian Student Traineeship Foundation. The existing programs use independent employment placement brokers to arrange work experience placements for year 11 and 12 students with local businesses and industry. The new program will enable the extension of a brokers role to arrange post-school employment and training options. This will create continuous workplace learning opportunities for students from Year 11 through to their first paid jobs.

1153. The $2 million will fund eight projects in Australia's areas of highest youth unemployment. The job guarantee program is part of Working Nation, a $9 billion program introduced in May 1994, as part of the commitment of the Australian Government to employment and training, particularly for young people.

Landcare, Environment and Action Program

1154. This successful training program aims to provide unemployed young people with formal training and practical experience on projects of environmental or cultural significance. More than 30,000 unemployed 15-20 year olds have received training through this program.

Higher Education

1155. Australia has an innovative scheme for funding higher education, designed to ensure that such education remains widely accessible. Higher education institutions in Australia are federally funded. Higher education spending will reach $16.5 billion over the period 1996 to 1998. Students are however required to make a financial contribution towards their higher education through the Higher Education Contribution Scheme. This contribution amounts to one-fifth of the average course costs and may be made at the time of enrolment for each semester or later through the taxation system once their taxable income reaches a certain level (roughly the level of average earnings in the Australian workforce). This latter aspect of the scheme was designed to minimise the deterrence that up front fees place on access to education, since students can defer the payment of fees until after completion of the course

1156. As discussed above in relation to income support, both AUSTUDY and ABSTUDY payments are available to students in higher education.

1157. The current policy document which relates to equality of access to higher education is A Fair Chance for All. This document dates from 1990 and:

- defines the overall equity objective for higher education to ensure that Australians from all groups in society have the opportunity to participate successfully in higher education;
- sets national equity objectives and targets for each of the groups identified as disadvantaged in gaining access to higher education. Such groups include people from low socio-economic backgrounds, Aboriginal peoples and Torres Strait Islanders, people from rural and isolated areas, people with disabilities, women wishing to enter non-traditional areas and people from non-English speaking backgrounds;
- presents a range of strategies for each disadvantaged group to assist higher education institutions in their planning; and

- sets out the responsibilities of both the Federal Government and institutions in achieving national equity goals.

1158. Following the publication of A Fair Chance for All, higher education institutions were required to develop equity plans as part of their overall educational profiles. The equity plans set institutional targets for the nationally identified disadvantaged groups in line with the national goals. In general, the targets are set bearing in mind that the student population should be changed such that it reflects more closely the composition of society as a whole, and in particular the composition of the catchment area of the institutions.

1159. Institutional equity plans also include an outline of the strategies the institution proposes to employ to help it reach its targets and an indication of the monitoring mechanisms in place to assess their effectiveness. The institutional equity plans are reassessed, and if necessary adjusted, each year by higher education institutions as part of the annual educational profile and funding discussions between individual institutions and Government officers. Equity and access is thus considered an integral part of the institution's overall educational profile. In addition a summary of the plans are published as a public document.

1160. Equity initiatives in the higher education sector are encouraged by allocations of funds to institutions through the Higher Education Equity Program. In 1994, total allocation under the Equity Program was $5.1 million. Annual allocations are made on the basis of the institution's equity plan and on progress towards its targets. Institutions are also expected to allocate resources to equity initiatives from their own recurrent general operating grant.

1161. Problems in defining and/or identifying people from some of the disadvantaged groups (people with disabilities and people from low socio-economic backgrounds in particular) have caused difficulties in the development of appropriate targets for participation. In order to monitor progress towards meeting national equity and access objectives across the higher education sector, the Federal Government commissioned a research study, Equity and General Performance Indicators, to assist institutions in shifting focus from inputs to successful outcomes. As part of their 1996-98 equity plans, institutions have been asked to use the agreed definitions and equity performance indicators, as described in this study, in setting targets and reporting progress towards achieving these in their equity plans.

1162. The approach taken by the Federal Government to equity in higher education has had a number of positive results. Institutions have taken seriously the need to monitor the participation of disadvantaged groups. Most have adequate monitoring mechanisms already in place, while others are working on refining their procedures. While the majority have set quantitative targets for the disadvantaged groups, all have articulated objectives and all have a wide range of strategies in place.

1163. Significant advances have also been made in relation to women's participation in higher education. The overall participation rate of women has continued to increase so that in 1994, 53.5 per cent of total enrolments were female compared to 52.7 per cent in 1990 (see generally tables **G2 and G3**).

1164. The number of students in higher education has grown rapidly. In 1982 there were 340,000 students whereas in 1995 there are over 600,000.

International cooperation

1165. Australian assistance to the education sector has risen steadily over recent years. Australia has historically devoted approximately 17 per cent of the total aid program directly to the education sector. **Table G4** shows the total disbursements for education and training and the break-up by function between 1990 and 1994. Table G5 details the distribution of Australia's education assistance.

1166. Australia's aid programs in the education sector have over recent years directed significant attention to the tertiary education sector. A better educated community can undoubtedly make a greater contribution to economic growth and productivity. Investing in formal and non-formal education and training, including in the crucial area of technical and vocational education, has proved to be one of the best means of achieving sustainable economic growth for developing countries.

1167. The Australian Government also recognises the importance of assistance for basic education. In particular the Federal Government is concerned to address the disparities in educational attainment between males and females. Education for women and girls is a vital aspect of social justice. It is also critical in improving the health of communities, reducing population growth and eradicating poverty.

The Tertiary Sector

1168. There is a strong demand in developing countries for tertiary education services that cannot be met locally. Providing such assistance is also an area of comparative advantage for Australia and will continue to be an important aspect of Australia's aid program.

1169. In Australia training commonly takes the form of formal degree courses at universities and colleges. There are two main award schemes, the Australian

Sponsored Training Scholarship (ASTAS) and the Australian Development Cooperation Scholarships (ADCOS).

1170. ASTAS is a Government-to-Government program primarily guided by country program strategies to ensure that courses of study are compatible with the developmental needs of recipient countries. The extent of this integration between development needs and course content varies among countries. In many cases there is a move towards short courses and practical work attachments. The tertiary sphere absorbs over 93 per cent of ASTAS students, of whom about 70 per cent are engaged in post-graduate work. Technical and vocational training under ASTAS occurs on a much smaller scale with an emphasis on short-term training, informal work attachments and study tours.

1171. Agriculture, engineering, business administration and social sciences are the most popular courses. As at August 1994 there were 3,282 students supported under ASTAS. Countries with the highest representation were Indonesia (22 per cent), Vietnam (10 per cent), Malaysia (eight per cent) and Papua New Guinea (seven per cent). A further 15 per cent came from the Pacific and 12 per cent from Africa. Female participation is rising (41 per cent in mid-1994, up from 31 per cent in 1992), although it remains below the target of 50 per cent.

1172. ADCOS is a merit-based scheme in which, in a number of countries, students with academic ability from particular disadvantaged groups or geographic regions are targeted. ADCOS is open to individual applicants, although numbers, types and distribution mechanisms are agreed between Australia and recipient Governments. Awards are available at Technical and Further Education (TAFE), undergraduate or postgraduate level, with less of an emphasis on postgraduate studies compared to ASTAS. At August 1994 there were 2,517 students supported under ADCOS. Malaysia (22 per cent), Indonesia (10 per cent) and Thailand (nine per cent) were the most strongly represented countries. Seventeen per cent of students were from the Pacific region and a further five per cent were from Papua New Guinea. Gender equity is mandatory under the scheme.

1173. The funding of $174 million directed to tertiary education in 1993-94 was 75 per cent of the total funding directed in overseas aid to the education sector in that year. Funding to the above two award schemes comprised $154 million, 66 per cent of spending to the education sector as a whole.

Project Aid

1174. Project aid to the education and training sector takes the following forms: capital projects and equipment supply, technical assistance, training programs, and staffing assistance. The bulk of assistance within the primary and secondary sub-sector has been delivered to the secondary level. Estimates suggest that primary education and basic literacy receive approximately 10 per cent of the sub-sector, or less than one per cent of the overall education sector.

1175. In the South Pacific, Australia is currently involved in developing activities in teacher training (Fiji and Western Samoa), primary and secondary education projects (Marshall Islands, Micronesia and Tonga) and classroom construction (Vanuatu, Solomon Islands and Tonga). In Asia, Australia is becoming more involved in strengthening countries' own education and training institutions, including universities, school systems, in providing English language training and increasingly, technical and vocational facilities.

1176. Some examples of Australian project assistance include:

- The Philippines-Australia Project in Basic Education is providing technical support and training to improve English, science and mathematics curricula and teaching in both elementary and secondary levels. The five year project operates in four regions.
- The Indonesian-Australia Polytechnic Project, valued at $16.3 million, is assisting four Polytechnics in Eastern Indonesia. A linkage program with Australian TAFE's is a new focus for the project.
- The Vanuatu Primary Schools Projects is providing education materials and upgrading primary school buildings.
- In Papua New Guinea, a program of support valued at $10 million over two years will provide educational equipment, material kits and assistance to upgrade up to 210 primary schools in the country.

1177. A significant level of support for the primary education and literacy programs is provided through non-government organisation projects and through the volunteer teacher programs. In 1993-94 there were 92 education activities funded under non-Government organisation programs. Total Federal Government funding for these projects was $2.26 million. Of these, over 25 per cent were located in South Asia, primarily in Bangladesh and India. In the Pacific 11 projects were undertaken, six of which were in Fiji. Ten projects were conducted in Papua New Guinea. Sixty-six of the projects were in the vocational education and training area, and 15 projects specifically targeted women. Nine of the projects were directed to children's educational needs.

States and Territories

1178. Both primary and secondary schooling is free in Australia. Schooling is compulsory from ages six to 15 years (with the exception of Tasmania where it is 16 years). However, the structure of primary and secondary schooling in Australia varies between the different States and Territories. In most States children start school at around the age of five when they enrol in an optional preparatory kindergarten year. After this optional year, primary education lasts for six or seven years depending on the State concerned.

1179. Secondary education is available for either five or six years. Secondary schooling usually consists of years seven to 12. The number of secondary students continuing their secondary education to the year 12 level has been increasing in recent years and in 1993 reached 77 per cent.

Australian Capital Territory

1180. In the Australian Capital Territory the Education Act 1937 mandates education between the ages of six and 15. However, applications may be made for an exemption certificate in certain defined circumstances. Each application is considered individually and where circumstances warrant, a certificate will be granted.

Vocational needs

1181. Primary and secondary schools in the Australian Capital Territory provide occupational and course information to students. A work education curriculum consultant supports schools in this area, offering advice, professional development and resources. This office also conducts an extensive, coordinated work experience program for secondary students. In the secondary college sector (years 11 and 12), full time careers advisers assist students with information and counselling on employment related issues. Both the work education consultant and the careers advisers have a monitoring role to ensure that the Department of Education and Training fulfils its aim to provide vocational education to all students. Work education is incorporated into all core subject areas to ensure that students see the vocational relevance of all of their studies.

1182. Further, Australian Capital Territory secondary colleges have implemented a system of vocational education through the introduction of Employment Courses. These courses aim to develop useful skills and attitudes in vocational areas. The Department has been involved in efforts to secure credit transfer agreements with the tertiary education sector to assist students to gain the most value from their participation in these courses.

Retention programs

1183. The Australian Capital Territory has the highest retention rate of all States and Territories **(see table G6)**.

1184. Student attendance in all schools is monitored by teachers and year advisers. Parents are usually notified of any unexplained absence of more than two or three days. A regional school support centre also has a Home School Liaison Officer to work with chronic truants and their families in an effort to return students to schools.

1185. Moreover, the Australian Capital Territory Department of Education and Training has a policy of providing for the management of student behaviour and addressing the emotional and social needs of students. In keeping with this policy, all schools have a pastoral care system based on a year adviser supported by a student welfare team with responsibility for attendance and other student management issues. A school counsellor is also available to assist.

Disadvantaged students

1186. The Australian Capital Territory Institute of Technical and Further Education (TAFE) has a variety of programs designed to improve the access to education of previously disadvantaged groups. The Equal Employment Opportunity Department is concerned to enhance the educational opportunities available to disabled students, and TAFE buildings are being renovated to improve physical access for those students with a physical impairment. TAFE also houses an Aboriginal and Torres Strait Islander Centre, which is funded by the Department of Employment, Education and Training, and runs a program for people from non-English speaking backgrounds in the Commercial Education School. This includes English as a Second Language programs and literacy and adult preparatory courses.

New South Wales

1187. The Education Reform Act 1990 provides for compulsory schooling for children between the ages of six and 15 years. Certificates of exemption may be obtained on the basis of home schooling, ministerial discretion, or parents' objection to attendance at certain classes on religious grounds.

1188. The New South Wales Government strongly supports a literacy strategy based on content rigour and reflecting the multicultural diversity of Australia. The definition of literacy includes oral language in addition to reading and writing. In New South Wales literacy policies and activities are based on the English K-6 syllabus, developed by the New South Wales Board of Studies. This syllabus is based on a sociolinguistic view of language, recognising that meanings are socially constructed. This view supports the development of critical literacy as well. The Government strongly supports the literacy needs of diverse learner groups including students from low socio-economic backgrounds, Aboriginal and Torres Strait Islander students, students learning English as a second language, students with special gifts and talents, girls and boys, students with disabilities and learning difficulties and students isolated from schools.

Vocational needs

1189. The New South Wales Department of School Education in collaboration with non-government schools, the Board of Studies, TAFE and industry have developed and implemented a number of industry specific courses in schools. These courses are accredited by the Board of Studies for the purposes of the Higher School Certificate and by the Vocational Education and Training Accreditation Board for the purposes of meeting industry training needs. The courses provide clear articulation and credit transfer into further education and training in related industry areas. These courses include a structured work placement for approximately one third of course time. Industry areas include building and construction, electronics, furnishing, hospitality, metal and engineering, office skills, retail and rural industries. Specific programs of training for existing teachers were developed for each industry area by all stakeholders.

1190. In addition to these industry specific dual accredited vocational courses credit transfer arrangements into TAFE have been negotiated for recognition of 38 general courses into 120 TAFE courses.

1191. Another ongoing area of cooperation involves the provision of Joint Secondary Schools TAFE (JSSTAFE) courses for senior secondary school students. These courses are either complete mainstream TAFE certificate courses or are composed of established TAFE subjects and offer dual accreditation from the Board of Studies and TAFE.

1192. One of the broad goals for New South Wales is to provide students with appropriate career education and knowledge of the world of work including an understanding of the nature and place of work in our society. Each Government high school in new South Wales has a full-time trained careers adviser who is responsible for the development and implementation of a career education program. Careers advisers, in partnership with other teachers, parents and employers, prepare students to make informed and appropriate career decisions through a coordinated program involving classroom teaching, guidance interviews and community based work-related experience.

Retention programs

1193. The New South Wales Government has put into place strategies which are designed to reduce drop-out rates in secondary schools after students reach the age of 15. Programs such as Students at Risk and Disadvantaged Schools endeavour to improve retention rates by providing resources to schools for appropriate curriculum offerings. These are school-based components which make particular provision for the target groups they serve by focussing on vocational and living skills.

1194. Furthermore, 99 Home School Liaison Officers provide a supportive, non-coercive resource to students, parents and schools, to encourage and assist students to maintain regular attendance at school. Specialist positions address specific needs of Aboriginal students and those of language backgrounds other than English.

1195. The range of course options available to senior secondary school students has been expanded in New South Wales to provide more relevant curriculum for the diverse group of students returning to school in years 11 and 12. As part of their Higher School Certificate (HSC) students can undertake a combination of general courses and vocational courses which provide both a breadth of study and credit transfer into TAFE and further education and training.

1196. Some of these courses incorporate structured work placement which provides a context for achieving course learning outcomes as well as providing an understanding of and commitment to the real world of work.

1197. The provision of this range of courses is seen as a significant strategy in increasing school retention rates.

Children in remote areas

1198. Because of low population densities, difficult geography and large distances, provision of, and access to education facilities for children in outback areas can be a challenge. In New South Wales since 1989 targeted funding through successive Rural Education Plans has enabled a strengthening of rural school staffing and other resources and enhancement of curriculum provision, particularly at the senior school level. Interactive communications technologies, including the use of satellite transmission, have been successfully used to extend these benefits to the smallest of rural schools.

1199. This has resulted in significant improvements in retention rates of students beyond the compulsory years of schooling and has led to improvements in the opportunities for geographically isolated students to access post-school education and training.

1200. The decentralisation of its distance education provision in New South Wales has also improved access to schooling for remote rural families. Eleven primary and seven secondary Distance Education Centres are located across the state. Use of VHF radios, teleconferencing and computer-based communications links, combined with field services programs from Distance Education Centre ensures greater opportunities for face-to-face instruction, social development and access to mainstream information sources for isolated students. An Open High School provides for part-time students, ensuring access for isolated students to low demand or highly specialised school subjects, and a central Learning Materials Production Centre provides high quality learning materials to support distance learning.

Disadvantaged students

1201. The Department of School Education has a Needy Students Scheme which provides special assistance to needy families with junior secondary aged children attending secondary schools. The main features of the Needy Students Scheme are:

- regions will provide money to all secondary schools but with a special focus on areas of socio-economic disadvantage; and
- secondary schools will establish small Advisory Committees to distribute available funds to students in need based on specific requests for assistance.

1202. The following items are listed as a guide to the types of items or activities which would be regarded as acceptable for the purpose of attracting assistance:

- school uniforms;
- textbooks;
- school excursions and related outings;
- school camps;
- subject specific costs; and
- stationery needs.

Aboriginal Education Assistants program

1203. The Aboriginal Education Assistants program has been extended as part of the Aboriginal Education Plan to provide additional personnel resources to schools to improve retention and academic achievements of Aboriginal students. Aboriginal Education Assistants are able to undertake training to strengthen their understanding of the education system, educational theory and Aboriginal cultures. Aboriginal Education Assistants are encouraged to upgrade their qualifications to full classroom teacher status under a part time employment/study program. Part of the Aboriginal Education Plan, the Aboriginal Early Language Development program, provides additional teachers, Aboriginal Education Resource Teachers, to assist Aboriginal students to improve their basic literacy and numeracy skills.

Northern Territory

1204. The Education Act 1979 provides that all children between the ages of six and 15 years must attend school.

1205. Under the Anti-Discrimination Act 1992, an educational authority may not discriminate in relation to admission, the terms and conditions of enrolment, by treating a student less favourably in any way in connection with the student's training or instruction.

1206. The Northern Territory Government advises that it is the responsibility of schools to ensure that Government funds are spent in such a way that all students receive an equitable share of national resources provided from these funds.

1207. In relation to truancy, the Department of Education of the Territory has authorised truancy officers and has issued guidelines for its reporting and prosecution.

Queensland

1208. Education is compulsory to age 15 in Queensland.

Disadvantaged students

1209. Special education may be provided or contributed to by the Minister for every disabled student who is of the age of compulsory attendance and who is enrolled in a non-State school or is receiving instruction by any other approved means.

Vocational needs

1210. Schools (usually at the upper secondary level - years 11 and 12) provide students with a range of vocationally oriented subjects. Some subjects are monitored by the Board of Senior Secondary School Studies which is the certifying agency for upper secondary education. Others are monitored by the Board of Senior Secondary School Studies in conjunction with TAFE, Training and Employment, Queensland - a section of the Department of Employment, Vocational Education, Training and Industrial Relations (TAFE TEQ). Examples of the former are agricultural subjects, commercial and business subjects, tourism and hospitality studies. Examples of the latter are construction, engineering studies, fashion studies and hairdressing.

1211. The provision of vocational information is the responsibility of the Guidance Information Services Section of the Department of Education. The Guidance Information Services Section acts as a clearing house for course and career information supplied by higher education institutions, TAFE colleges, major employers, professional associations and private providers. The section also liaises with major providers of information to collect, synthesise and distribute information to guidance personnel. Regular information on courses and careers is distributed to schools through a national computer database, school-based guidance officers and school support centres.

1212. Students are also provided with skills which can be used in applying for and being interviewed for employment through the Human Relationships Education Course run by the Queensland Department of Education.

South Australia

1213. Primary Education is compulsory from the age of six years up to 15 years with most students entering school on or after their fifth birthday. Special measures are in place to ensure that all students complete between eight and 12 terms of junior primary schooling. Secondary schools offer a range of subjects to students by both face-to-face and open access methodologies thus allowing achievement in a variety of subject areas.

Vocational needs

1214. A successful program on school-industry links was developed during 1990-91 ensuring students at all levels of schooling have an understanding of the world of work. Work education programs offer opportunities to secondary students to make informed decisions regarding their future and to take part in work experience placements.

Retention programs

1215. The teacher/student ratio in South Australia has enabled the introduction of a wide range of programs to improve the quality of education. These include social justice initiatives for students from targeted groups aimed at increasing retention, participation and attainment.

1216. The appointment of attendance counsellors and the introduction of a new Roll Book with more vigorous checking procedures on absences are assisting with increasing attendance rates. Student Counsellors are appointed to all secondary schools and to a large number of primary schools. In addition, interagency cooperation has developed mechanisms to support the attendance of students with behaviour difficulties.

Tasmania

1217. While the compulsory years for education are from the age of six years through to 16 years, pre-year one opportunities are provided for children who are aged four years as at 1 January and post-compulsory courses are provided in the senior secondary colleges in years 11 and 12, the final two years of secondary education.

Victoria

1218. Education is compulsory for all children from age six to 15.

1219. Financial support, mainly in the form of an Education Maintenance Allowance or the federally funded AUSTUDY (see above), is available for children in cases of need. Schools with the greatest concentrations of socio-economic disadvantage are supported with additional resources through the Federal Disadvantaged Schools Program.

1220. The Office of Preschool and Child Care administers a major funding program to provide universal access for four year olds to one year of preschool education.

1221. A Community Based Mentor Program has been established to increase the participation of Aboriginal students at all levels of education. The concept of a mentor is an extension of the cultural learning of Aboriginal people.

Vocational needs

1222. Most secondary schools appoint careers teachers and provide information and advice about careers and further education and training. Vocational information and guidance are also provided through a variety of programs including:

- Job and Course Explorer, a computerised information system which provides school students and others in the community with access to the range of post-secondary education courses and institutions (and identified facilities) available to them;
- Women Talk Work Register, a register of women in non-traditional occupations who are able to speak to primary and secondary school students as part of the school's career and course information program; and
- Tradeswomen on the Move, a scheme involving women apprenticed in non-traditional trades, workplace visits and 'taster' days in TAFE colleges to broaden school girls' knowledge and experience of working in these trades.

1223. The Victorian Directorate of School Education has a policy of providing a broad comprehensive curriculum which encompasses both general and vocational education. This broad policy is evident in recent improvements to the final year certificate (the Victorian Certificate of Education), the establishment of a dual recognition policy for years 11 and 12 and the publication of the Curriculum and Standards Framework by the Board of Studies in early 1995. These initiatives provide the policy framework within which schools will develop curricula designed to meet the needs of all students and which will provide access to curricula regardless of socio-economic status, parents' income, ethnic or racial background, gender, disability or geographic location.

1224. For students in Years P-10 the new Curriculum and Standards Framework provides a focus on learning about the workplace, production and enterprises. This is clear in both the Studies of Society and Environment and Technology Key Learning Areas.

1225. In Years 11-12 there are opportunities for students in their VCE studies to focus on the world and to develop the broad generic skills which are advocated by industry.

1226. The most significant development in Victoria has been the introduction of the Dual Recognition policy. In mid 1993 a joint Ministerial statement established a policy on the recognition of elements of training curricula within the VCE. Over a two year period students are now able to complete their VCE as well as a full training credential and receive a tertiary entrance rank.

1227. Programs are now available in Electronic, Office Administration, Hospitality, Engineering, Automotive and Retail. Work is underway in a number of other industry areas and will rely heavily on co-operation with industry.

Retention programs

1228. In Victoria, there has been significant improvement in the proportion of students staying at school to Year 12. Compared to five years ago, when about 60 per cent of students stayed on to Year 12, 77 per cent of students do so now. Barriers to access and participation have been identified and strategies are being developed to reduce even further the incidence of early school leaving.

Western Australia

1229. Under the Education Act 1981 attendance at school is compulsory between the age of six and the end of the school year that students turn 15. Distance education facilities are provided for those students who are unable to attend school due to a disability or isolation. The State Government also provides benefits such as assistance with clothing and books for parents of school children who cannot afford to purchase them.

1230. The Western Australian Department for Community Development provides an early education program which assists disadvantaged parents prepare their young children for entry into the school system. Home-school support is also provided to assist older children to remain within the school system.

1231. The Department of Community Development also operates and funds a number of programs directed at reducing truancy, especially among youth at risk of, or who have begun to offending.

1232. In relation to vocational training, this is provided to youths in detention centres. The Western Australian Government is upgrading options available to detained offenders.

(b) Aims of education (Article 29)

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

- (b) *The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*

- (c) *The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;*

- (d) *The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;*

- (e) *The development of respect for the natural environment.*

2. *No part of the present Article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present Article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.*

Federal matters

1233. In May 1988 the Federal Minister for Employment, Education and Training released the statement Strengthening Australia's Schools. This statement invited the co-operation of the States and Territories in developing and implementing a national effort to strengthen the capacity of Australia's schools to meet the challenges they face. In particular, the statement stressed the critical and central role of schools in providing the foundation of a highly skilled, flexible and productive workforce and the basis for a well-informed and cohesive society. The following areas were identified as calling for national attention: purposes, objectives and priorities of schooling; increasing school retention; education and equity; a common curriculum framework; a common approach to assessment; priorities for improving the training of teachers; and maximising investment in education, including determining ways to maximise cooperative undertakings and remove unnecessary differences in schooling across Australia.

1234. In 1989 the Australian Education Council (now the Ministerial Council on Education, Employment, Training and Youth Affairs), which is made up of all State, Territory and Federal Government Ministers of Education, agreed upon a list of 10 common national goals for Australian education. This document is known as the Hobart Declaration on Schooling in Australia. These goals reinforce the aims of the Convention. They are:

- To provide an excellent education for all young people, being one which develops their talents and capacities to full potential, and is relevant to the social, cultural and economic needs of the nation.
- To enable all students to achieve high standards of learning and to develop self-confidence, optimism, high self-esteem, respect for others, and achievement of personal excellence.
- To promote equality of educational opportunities, and to provide for groups with special learning requirements.
- To respond to the current and emerging economic and social needs of the nation, and to provide those skills which allow students maximum flexibility and adaptability in their future employment and other aspects of life.
- To provide a foundation of further education and training, in terms of knowledge and skills, respect for learning and positive attitudes for life-long education.
- To develop in students:
    - -the skills of English literacy, including skills in listening, speaking, reading and writing;
    - -skills in numeracy, and other mathematical skills;
    - -skills of analysis and problem solving;
    - -skills of information processing and computing;
    - -an understanding of the roles of science and technology in society, together with scientific and technological skills;
    - -a knowledge and appreciation of Australia's history and geography;
    - -a knowledge of languages other than English;
    - -an appreciation and understanding of, and confidence to participate in, the creative arts;
    - -an appreciation and understanding of, and concern for, balanced development and the global environment; and
    - -a capacity to exercise judgment in matters or morality, ethics and social justice.
- To develop knowledge, skills, attitudes and values which will enable students to participate as active and informed citizens in our democratic Australian society within an international context.
- To provide students with an understanding of and respect for our cultural heritage including the particular background of Aboriginal and ethnic groups.
- To provide for the physical development and personal health and fitness of students, and for the creative use of leisure time.

- To provide appropriate career education and knowledge of the world of work, including an understanding of the nature and placed of work in our society.

1235. After the Australian Education Council reached agreement on the 10 common and agreed national goals for schooling, it further agreed to develop a series of eight national learning area statements and profiles. The eight agreed learning areas are the Arts, English, Health and Physical Education (which includes personal development), Languages Other Than English, Mathematics, Science, Studies of Society and Environment and Technology. In relation to promotion of languages other than English, and in particular the promotion of community languages, see Part H (d), Special protection measures, Children belonging to a minority or indigenous group.

1236. The national statement for any given learning area expands on the common and agreed goals for that area and aims to define that particular area of the curriculum and outline its essential elements. One of the purposes of the national profile in any learning area is to provide a common assessment framework for reporting student achievement. This framework enables teachers to focus on each child's learning progress.

1237. The statements and profiles outline what students should learn in each learning area and to what level of complexity. The profiles use gender inclusive language. The knowledge, experience and interests of women and Aboriginal and Torres Strait Islander peoples are included by the provision of cross-curricula perspectives. The cross-curricula perspectives provide a framework for dealing with certain subject matter across the eight learning areas. Following are the cross-curricula perspectives which underline the values inherent in teaching and learning:

- Cultural heritage: valuing Australian experience within an international context. This includes the cultural background of Aboriginal and Torres Strait Islander people, immigrant groups and the experiences of men and women. Aboriginal and Torres Strait Islander Studies have been specifically secured within the national curriculum statement and profile for studies of Society and Environment. However, Aboriginal and Torres Strait Islander perspectives have been infused in all other learning area curriculum statements and profiles.

- Technology: incorporating the knowledge, skills and processes of technology, along with how these technologies are applied, their impact on society now, and how they may influence our future.

- Social and economic awareness and understanding: making the curriculum statements and profiles relevant to the social and economic needs of the nation and responsive to emerging challenges.

- Active and informed citizenship: encouraging the development of understanding of and respect for the democratic principles and institutions of our society and participation in them.

- Knowledge and social context: recognising that knowledge has been and is developed in a social context. Knowledge in the curriculum areas is defined wherever possible in ways that encourage students to relate to their own experiences and to contemporary social contexts.

- Groups with special needs: providing for groups with special learning requirements. Some supplementary statements of the scope and sequence of the curricula for children who do not yet speak English and for students with learning disabilities have been developed. It is likely that some learning area statements will not realistically be able to accommodate the learning goals for some of these students in some circumstances.

- Ethic: taking into consideration moral and ethical perspectives to encourage students to develop the capacity to exercise good judgment in matters of morality, ethics and social justice.

- Self-esteem and well-being: recognising that schooling should be an experience which contributes to developing self-confidence, respect for others, optimism and high self-esteem. The health and physical education learning area makes specific provision for the physical development, personal health and fitness of students and the creative use of leisure time.

- Equality of opportunities: providing for equality of educational opportunities and recognising that students bring a wide range of abilities and experiences to each stage of schooling.

Civics and citizenship education

1238. One of the learning areas, Studies of Society and the Environment, provides students with the opportunity to develop a good knowledge of Australia's political and legal systems. The 1995 Federal budget committed $25 million over four years to help develop a better understanding of the features of Australian democracy and the rights and responsibilities of citizens. Most of these funds will be spent in schools, TAFE and higher and community education to support a comprehensive non-partisan program for civics and citizenship. In schools, the focus will be on curriculum development and teachers' professional development.

1239. The new funding, in particular given the approaching centenary since Australia's federation, is aimed at ensuring a better quality of debate about civic structures and the rights and responsibilities of citizens. It will ensure that civics education is entrenched as a fundamental and effective part of the curriculum in Australian schools.

Violence in schools

1240. The community is increasingly concerned about violence in schools. Violence in schools significantly interferes with achievement of educational aims and limits maximisation by children of educational opportunities.

1241. The Federal Government established the House of Representatives Standing Committee on Employment, Education and Training Inquiry into Violence in Australian Schools (Sticks and Stones: Report on Violence in Australian Schools) to investigate the nature, impact and incidence of violence in schools. The Report gives a comprehensive picture of different aspects of violence in our schools. This includes bullying, violence based on gender and racism and ethnic violence. All of these issues are of great concern to the Government.

1242. In response to the Report, the Federal Government has agreed to invite the State and Territory Governments to work towards the development of a shared national approach to address violence (including racist violence) in Australian schools. As part of this, the Federal Government proposes to provide funds for State-based forums to identify and promote best practices in the area, to introduce best practice awards for schools that display leadership in this area, and to investigate developing national data on the incidence and nature of school-based violence.

1243. One of the issues which affects children's development, ability to learn, citizenship rights and ability to live respectfully and responsibly in a free society is the issue of gender and violence. The Federal Government is supporting the development of a range of curriculum and school management materials on gender and violence. The first stage of the program explored the dominant approaches taken in addressing violence in schools and recommended that future initiatives should:

- define violence in a broad context;
- identify the criminal nature of violence;
- place the cause of violence in a power framework; and
- connect it to the construction of masculinity and femininity.

1244. A whole school kit is being produced for both primary and secondary schools as part of the project based on the above principles. The material will assist students, teachers and parents to recognise and deal with gender-based violence in their school communities and in their lives.

1245. The Federal Government is also supporting the development of a framework for dealing with issues of gender and violence in Aboriginal and Torres Strait Islander school communities, which examines the dimensions of gender violence and disadvantages which Aboriginal and Torres Strait Islander students can experience. The project deals with racism, the role of language and the cumulative social and cultural effects of colonisation. The project materials also include modules which can be used for professional development of teachers regarding these issues.

1246. Effective approaches to addressing violence have also been developed in some schools. One of the problems remains that there are insufficient mechanisms currently in place for sharing this information and building upon good practice, particularly across State and Territory boundaries.

1247. In its response to the Sticks and Stones Report the Federal Government is seeking State and Territory co-operation in developing a national approach to addressing violence in Australian schools. This includes the development of a comprehensive and consistent data base on the nature and incidence of violence in schools and the compilation of successful approaches that have been adopted by some schools around the country.

1248. The Federal Government is also addressing the issues related to violence such as gender inequality and literacy.

Environment

1249. At a Federal level, the Department of the Environment, Sport and Territories supports appropriate environmental education and information initiatives in collaboration with the Department of Employment, Education and Training, with State environmental and education bodies and at the local level in working relations and liaison with teachers, schools, non-government organisations and community groups.

1250. In schools, most States and Territories are now using the Australian curriculum framework as a basis for curriculum development. As part of the national Ecologically Sustainable Development (ESD) Strategy, State and Territory Education Ministers agreed to the incorporation of ESD principles as a cross curriculum perspective in the national curriculum frameworks, particularly in the areas of studies of society and the environment, science, technology and health and physical education. In the national statement for studies of society and environment, there is a specific focus on environmental stewardship and conservation, a commitment to maintaining biological diversity and recognition of the intrinsic value of the natural environment.

1251. In the broader community the Department of the Environment, Sport and Territories also places a high priority on the development and implementation of high quality public information programs as an integral part of achieving its broader environmental objectives.

Literacy

1252. All Australian education systems place high priority on student achievement in English literacy and this is reflected in the Hobart Declaration on Schooling where literacy is listed first in paragraph 6. The stated aim is to develop in students the skills of English literacy, including skills in listening, speaking, reading and writing. The status accorded to literacy is also reflected in the fact that most education systems are giving priority to implementing the English profile.

1253. For many years under the National Equity Program and its predecessors, the Federal Government has recognised the strong relationship between low levels of literacy, unemployment and other forms of social disadvantage. The aim of literacy underpins the Federal Government's annual $3 million investment in school education.

1254. All State and Territory education systems regularly assess the English literacy skills of school students at critical stages of schooling. However, this testing is not conducted in a sufficiently consistent manner to enable firm conclusions to be drawn about the national attainment of literacy skills by school students. In the 1994 White Paper on Employment (Working Nation), the Federal Government allocated approximately $2.6 million to collect by the end of 1996 reliable national data on literacy levels of school students. The aims of the Project are:

- to obtain a clear view regarding English literacy levels among Australian school students, identifying those student characteristics associated with different levels of literacy;
- to enable Governments to assess literacy needs so that resources can be targeted more effectively; and
- to establish national benchmarks against educators from which educators can assess the effectiveness of current programs and can adjust their goals and programs to improve literacy levels.

1255. Two elements of the National Equity Program for Schools (NEPS) address literacy directly. The Literacy and Learning national component supports projects which will develop the literacy and learning of children in the early years of school, particularly children disadvantaged by socio-economic circumstances. The Early Literacy component, aimed at the same target group, promotes intervention strategies, such as reading recovery, and professional development programs. Funding for these two program elements totals $10.5 million in 1995. In addition, the Federal Government is currently reviewing the level of recurrent funding for government primary schools with a particular view to assessing the requirements for improved literacy and learning.

Equality Between the Sexes

1256. Federal, State and Territory Governments have worked together to bring about real improvements in equality of educational outcomes for girls and boys. One of the most significant initiatives has been the development of the national Policy for the Education of Girls in Australian Schools and the National Action Plan for the Education of Girls for 1993-97.

1257. Both the National Policy for the Education of Girls and the National Action Plan were endorsed by the Federal, State and Territory Ministers of Education, the national Catholic Education Commission and the National Council of Independent Schools.

1258. The National Policy for the Education of Girls in Australian Schools (Commonwealth Schools Commission 1987) is dedicated to improving schooling and its outcomes for girls and provides direction for change and coordination of effort. The four broad objectives of the Policy are to raise awareness of the educational needs of girls, to provide equal access to and participation in appropriate curriculum, to provide a supportive school environment and to provide for equitable resource allocation. The Policy is comprehensive in its coverage. It calls for complementary policies for early childhood and tertiary education.

1259. The National Policy was reviewed in 1992 and the outcomes of the review were published in the National Action Plan for the Education of Girls 1993-97. The National Action Plan confirmed the continuing appropriateness of the National Policy and serves as a practical addition to the National Policy. It provides information to improve the educational and social needs of girls in schools through eight new priority areas:

1260. Broadening work education

Improving teaching practice

1261. Eliminating sex-based harassment

Reforming the curriculum

1262. Addressing the needs of girls at risk

Improving the educational outcomes of girls who benefit least from schooling

1263. Examining the construction of gender

Changing school organisation and management practice

1264. Included in the Plan are a number of strategies to address gender-bias in the curriculum which is a key factor in determining education access, participation and outcomes for girls. Strategies include the development and implementation of non-discriminatory assessment methods, and system guidelines for schools which enable the development of gender-inclusive curriculum in all learning areas.

1265. All Australian education systems and authorities report annually on their achievements of the objectives of the National Policy and National Action Plan through the National Report on Schooling in Australia and Girls in Schools Reports.

Gender Equity in Curriculum Reform Project

1266. To support the National Policy the Federal Government provided $3 million over three years from 1991 to facilitate the development of school curriculum which was equally relevant to girls and boys. Under the Project an education girls consultant was appointed to provide expert advice to each of the teams which were writing the national curriculum statements and profiles in eight key learning areas. The Project also funded innovative projects across Australia to support the work being undertaken by the Gender Equity curriculum consultants and to further develop counter-sexist and gender inclusive curriculum strategies. Most of the outcomes from these projects have been published and include curriculum and professional material for teachers.

Gender Equity Taskforce

1267. The implementation of the National Action Plan was overseen initially by the National Advisory Committee on the Education of Girls and more recently, by the Ministerial Council on Education, Employment, Training and Youth Affairs Gender Equity Taskforce. The Taskforce was established in early 1994. The Federal Government and all States and Territories are represented on the Taskforce, along with other key groups which include non-Government school authorities, parents and unions. The work of the Taskforce is being funded by the Federal Government.

1268. The terms of reference of the Taskforce are to:

- monitor the implementation of the National Action Plan for the Education of Girls;
- provide advice to national committees and working parties on gender equity issues;
- provide advice on the best practice in the education of boys as it relates to the education of girls;

- identify, in consultation with experts in the field;
  - further strategies for implementing the National Action Plan priority areas;
  - pathways which facilitate positive outcomes for girls throughout life; and
  - key areas for further development.
- build on the work to date in the area of gender equity as it relates to the education of girls and on outcomes/findings of review of gender issues in the education of boys;
- report on programs currently in place in States and Territories which primarily support the education of boys in their operation (eg behaviour management and remedial education programs) and to report on research currently underway in States and Territories; and
- provide advice to the Ministerial Council on Education, Employment, Training and Youth Affairs for further work which would facilitate State and Territory collaboration in addressing the educational disadvantage of groups of boys.

1269. The Taskforce is to report to the Ministerial Council at the end of 1995.

Enterprise Education in Schools

1270. A primary economic outcome of enterprise education is fostering the development of business opportunities (including those in small business) by mobilising the effort and activity of individuals and the Federal Government to support the promotion and development of enterprise education in schools.

1271. The proposals include the development of quality curriculum materials, the provision of appropriate professional development for teachers on the development of enterprise in students, the development of materials and processes to advise students of the opportunities emerging as small businesses grow in importance, and the establishment of a program to promote the development of community awareness of the value of enterprise and to determine what role schools can play in this process.

1272. States and Territories have individual approaches to the development of enterprise in schools. The Federal Government initiative will be to fund the development of a more uniform approach to the development of enterprise in schools. A high degree of agreement has been reached with all education authorities and the focus of the program will be on the broad interpretation of enterprise, ie that the focus should be on the development of the enterprising individual able to cope with change and take advantage of opportunities.

State and Territory matters

Australian Capital Territory

1273. The Education Plan for Australian Capital Territory Government Schooling (1995-97) states that the Australian Capital Territory Government school system seeks to ensure successful learning for all students. The Australian Capital Territory has also agreed to the Hobart Declaration of common and agreed goals for schooling in Australia.

1274. The Australian Capital Territory is committed to implementing the National Policy for the Education of Girls in Australian Schools which sets out objectives and strategies to help systems and schools to meet the education needs of girls. In addition, the National Action Plan for the education of girls 1993-97 sets out priorities for girls in Australian schools. The Department of Education and Training is required to report annually to the Ministerial Council for Employment, Education, Training & Youth Affairs on its implementation of this policy. The Department's Gender Equity Policy 1987 provides direction to schools on equitable schooling for female and male students. A draft Gender Equity Curriculum Statement assists schools to develop gender equity strategies which involve women and girls finding new and positive ways to construct femininity and men and boys finding new and positive ways to construct masculinity.

1275. Gender equity is one of the across curriculum perspectives which requires schools to incorporate the needs, interests and experiences of girls, as well as those of boys, into their curriculum. A policy relating to sexual harassment of or among students in Australian Capital Territory Government schools has been issued as an official policy together with guidelines for dealing with sexual harassment.

1276. The Department has provided in-service education to teachers on the implementation of the policy, and has provided training for two sexual harassment contact officers in each school. The Department offers ongoing professional development in this area, so that all students have the opportunity to learn in an environment which is free of harassment.

1277. The Department indicates to schools their responsibilities to Aboriginal and Torres Strait Islander students and to developing in all students through a number of policies and programs, an awareness of the value of Aboriginal and Torres Strait Islander peoples and cultures. The Department is committed to implementation of the National Aboriginal Education Policy through the National Aboriginal Education Strategic Initiatives Program (AESIP). To this end, the Department has joined with the non-Government and Vocational Education and Training sectors to form the Australian Capital Territory Strategic Plan, and more specifically, its own operational plan. The Department also has its own Aboriginal and Torres Strait Islander Education Policy which informs schools on Aboriginal and Torres Strait Islander education in this system. Aboriginal and Torres Strait Islander education is one of the across curriculum perspectives, which requires that the whole school curriculum incorporate Aboriginal and Torres Strait Islander issues within it. This means that Aboriginal and Torres Strait Islander students will find that the curriculum values and supports their culture and encourages all students to do so.

1278. The Department of Education and Training expresses its views on teaching students about environmental issues through its Environment Policy and Curriculum Statement on environmental education. The environmental perspective is one of the across curriculum perspectives, and education about the environment forms one strand of the Social Education Framework. Many schools conduct units of work on environmental issues, including involving students in local practical action.

1279. The school curriculum teaches respect for human rights in a variety of ways. The Department has nine across curriculum perspectives which influence curriculum development and delivery in all subject areas. A number of these relate to social equity issues: the gender equity, Aboriginal education and Torres Strait Islander education, special needs, multicultural education and language for understanding perspectives. The Department's curriculum framework in studies of society and environment, used by schools to develop school-based curricula, has as a major role the development in students of commitment to defend individual rights and the rights of others, and to carry out the responsibilities such rights entail.

1280. Human rights is an area within the 'values and attitudes' dimension of the social education curriculum framework and therefore pervades many of the topics covered through this subject area in schools. Many primary schools also conduct units of work specifically on the subject of human rights, some of these based on curriculum material developed by the Federal Human Rights and Equal Opportunity Commission. Secondary schools implement courses on citizenship education, in which students explore their rights and responsibilities as citizens within society. Schools also educate about human rights through their educational philosophies which exert a strong influence on school ethos and the learning environment for all students. Most schools make specific mention in their school documents of human rights as a priority area and social justice as a goal of their educational responsibilities. Students in many schools participate in the development of school and class rules and engage in classroom meetings to discuss issues of significance to them. They focus on many issues relating to fundamental freedoms, especially as these relate to their own lives.

1281. The Department of Education and Training, in its educational philosophy expressed through policies and programs, prepares the child for life in a free society, and one which comprises a variety of cultures and ethnic groups. Schools foster a spirit of understanding and peace through behaviour programs aimed at teaching students to live and work in harmony with each other. Schools provide social skills groups and individual counselling for individuals who need special help in this area. Many primary schools include units of work on peace, which involve the whole school, as part of their social education curriculum. Schools run programs on problem solving and conflict resolution, teaching students the skills to facilitate the solving of conflicts.

1282. The Department provides direction to schools on developing respect for peoples of all cultures and intercultural understandings through its policies on services, on behaviour and on curriculum. These include policies for English as a Second Language, Aboriginal Education, the draft Curriculum Policy and the Multicultural and Anti-racism Policies currently being developed. Both the Aboriginal and Torres Strait Islander and the multicultural education across curriculum perspectives are incorporated into all subject areas. Through multicultural education students come to understand culture as a social construction and to understand and respect their own and other heritages. They also learn to challenge constructions which are detrimental to individuals and groups and work to promote intercultural harmony. The recent inclusion of Languages Other Than English (LOTE) as one of the core subject areas indicates the importance now being placed upon leading students to an appreciation of community and international languages and cultures.

New South Wales

1283. The New South Wales Department of School Education's plan Education 2000 outlines 10 objectives which cover the points in Article 29(1)(a) with the following objectives being of particular relevance:

- to develop in students the knowledge, skills and attitudes required in key learning (specified) areas, to enhance their quality of life and contribution to society;
- to enable students to achieve high standards of learning and develop self-confidence, self-esteem and a commitment to personal excellence based on a positive set of values; and
- to develop respect for others and an appreciation of Australia's multicultural heritage and to promote informed citizenship in our democracy and the world community.

1284. Multiculturalism in education is the means by which the Department of School Education ensures that its educational service responds effectively to its culturally and linguistically diverse clientele. Multicultural education is a combination of policies, programs and practices aimed at ensuring that all schools recognise and accept the multicultural nature of Australian society and take positive steps to provide educational opportunities which will promote national unity through a deeper understanding of the cultural pluralism of our society.

1285. Multicultural education is thus an acknowledgment of the New South Wales Government's commitment to assist children:

- to gain access to society's resources through fluency in English;
- to understand, maintain and develop their home language and/or culture through schooling; and
- to understand the role that cultural and linguistic diversity plays in the lives of individuals, their families and the nation.

1286. While the Government generally believes that the day to day decisions relating to education should be made as close as possible to individual schools and their communities, it also recognises the need for:

- coordinated statewide policy development;
- coordinated strategic and innovative planning and research; and
- monitoring at Statewide level.

1287. The Multicultural Education Unit within the Specific Focus Programs directorate of the Department has this responsibility. Reporting on progress in the implementation of Departmental strategies in the above areas is completed annually and distributed publicly via the Annual Report of the Department.

1288. Policies of the New South Wales Department of School Education relevant to Article 29(1)(d) include the Aboriginal Education Policy (1982) and Anti-racism Policy (1992). In addition the Department of School Education has encouraged the development of Aboriginal Studies programs in New South Wales schools. The principal aims of the Aboriginal Education Policy include developing an 'enhanced sense of person worth and identity' in Aboriginal children, encouraging in all children the development of knowledge, understanding and appreciation of Aboriginal heritage and culture and the acceptance of the rights of different people to hold different values, attitudes and beliefs.

1289. The Department of School Education has a mandatory mainstream Girls' Education Strategy (1989) whose overall purpose is to improve the educational outcomes from schooling of all girls. The strategies have been developed to increase girls' opportunities for further education training and employment, their personal growth and development and their capacity to participate as active citizens in the life of the Australian community. The Environmental education curriculum statement K-12 promotes establishment of opportunities for students to develop appropriate skills and understanding to make informed judgments for the maintenance and improvement of the environment.

1290. The New South Wales Government strongly supports a literacy strategy based on content rigour and reflecting the multicultural diversity of Australia. The definition of literacy includes oral language in addition to reading and writing. In New South Wales literacy policies and activities are based on the English K-6 syllabus, developed by the New South Wales Board of Studies. This Syllabus is based on a sociolinguistic view of language, recognising that meanings are socially constructed. This view supports the development of critical literacy as well. The government strongly supports the literacy needs of diverse learner groups including students from low socio-economic backgrounds, Aboriginal and Torres Strait Islander students, students learning English as a second language, students with special gifts and talents, girls and boys, students with disabilities and learning difficulties and students isolated from schools.

1291. The New South Wales Government is providing support focusing on the English K-6 syllabus, literacy across all key learning areas and early literacy. Literacy in the early years includes an initiative of an additional 100 Kindergarten teachers being appointed to schools where students have particular literacy needs. The literacy development of students from low socio-economic backgrounds is supported by the Early Literacy and Literacy and learning Components of the National Equity Program for Schools. Intervention programs include Reading Recovery, the Early learning Program, Learning Assistance Support Team Project, as well as several types of support classes.

1292. The New South Wales Department of School Education has made the raising of literacy standards a major area of curriculum focus. The English K-6 syllabus is based on a sociological view of language and promotes the full range of literacy outcomes. Support for literacy and the literacy demands of all key learning areas is designed to remove literacy barriers which limit participation in society.

Queensland

1293. The Department of Education works in partnership with students, parents and the wider community to ensure that students in Queensland receive a high-quality education appropriate to their individual needs and to the needs of society. The Department is involving children in the development of curriculum in the upper primary and secondary levels.

1294. The Department aims to help students develop as independent and knowledgeable people who are morally and socially responsible, employable, capable of self fulfilment and capable of contributing to society. Specific goals under the Common and Agreed National Goals for Schooling in Australia are:

- to improve students' achievements in literacy and numeracy;
- to integrate information technology into educational programs; and
- to maximise educational access, participation and outcomes for disadvantaged groups.

South Australia

1295. The National Goals of Schooling form an integral part of the charter for Public Schooling in South Australia. In 1992, a National and Collaborative Curriculum Development Unit was set up to deal with national curriculum activities and nationally agreed projects. Literacy, health and personal development are the initial thrusts. Following International Literacy Year a State plan for literacy was developed and is being followed through.

1296. The South Australian Government policy document, Educating for the Twenty-First Century, is based on the premise that all young people have the right to gain a broad and balanced education that prepares them for effective participation in society. In meeting this premise through various strategies students are prepared for a responsible life in a free society. The policies and guidelines of the Education Department are based on the rights of individual. A number of strategies are in place which recognise and value cultural difference:

- affirmative programs to train Aboriginal teachers to work with Aboriginal students;
- the employment of Aboriginal Education workers to mesh Aboriginal culture in educational programs;
- Aboriginal studies programs;
- multicultural education programs; and
- anti-racism policy and grievance procedures.

1297. As well as specific support for Aboriginal students, including urban Aboriginal schools, students from minority groups are supported by New Arrival Programs, English as a Second Language teaching and special language centres for students of non-English speaking background.

1298. Society and Environment is one of the required areas of study which provides students with the broad range of knowledge, skills, attitudes and understanding that will prepare them for effective participation in society. A Land Care project through 1990-91 set up a network of schools as centres of environmental excellence.

1299. Following International Literacy Year a State plan for literacy was developed and the Education Department responsibilities are being followed through.

Tasmania

1300. The aims of education within the State are outlined in the 1991 Strategic Plan of the Department of Education and the Arts. They follow the goals of the Hobart Declaration on Schooling in Australia and meet all the requirements of Article 29. The Department of Education and the Arts affirms that the aims outlined in the Strategic Plan are being achieved in practice. In specific areas, notably basic numeracy and reading skills, the Department operates a State-wide monitoring program involving all 10 to 14 year olds on a regular cycle. This program provides a measure of quality assurance for basic numeracy and literacy skills. It is envisaged that the program will be extensively modified from 1994 to provide a basis for early intervention diagnosis and remediation for those likely to be at risk.

Victoria

1301. The 1993 report A Quality Provision Framework for Victorian Schools' provides a detailed list of the areas of learning all students should experience. These areas of learning are now listed in Schedule 2 of the Education Act 1958. These documents support the directions set out in Article 29 of the Convention. The quality provision framework is designed to ensure that all students in primary schools and secondary colleges are provided with high quality programs that allow them to progress at a satisfactory rate in the learning areas of the agreed national curriculum areas. These areas are the Arts, English, Health and Physical Education (including sport), Languages other than English, Mathematics, Science, Studies of Society and Environment, and Technology.

Western Australia

1302. The Mission Statement of the Ministry of Education in Western Australia is as follows:

> To ensure that our students develop the understandings, skills and attitudes relevant to individual needs, thereby enabling them to fulfil their potential and contribute to the development of our society.

1303. To achieve the mission, the Ministry seeks to ensure that the following outcomes are achieved for all students:

- effective literacy skills;
- effective mathematical skills;
- an ability to find and use information;
- a capacity to utilise technology;
- an ability to work cooperatively with others;
- an approach to learning which is both responsive and critical;
- an understanding of historical, social and cultural contexts;
- an understanding of the natural world and of scientific principles;
- an appreciation of, and confidence to participate in, the creative and practical arts;
- a concern for, and understanding of how to achieve, physical health and well-being;
- a respect for the rights of others; and
- personal qualities of self-acceptance, initiative and self-confidence.

1304. Schools will proceed towards the achievement of these outcomes through school development planning.

1305. The Ministry is committed to:

- treating students and staff with dignity and in a caring manner;
- promoting mutual respect, trust and recognition of individual worth;
- recognising the contributions of others;
- using self-evaluation as one component of quality assurance; and
- encouraging self-development to maximise effectiveness and efficiency.

1306. The Department of Community Development also incorporates the aims in Article 29 paragraph 1 within educational programs run by it in detention centres.

Particular focus is placed on programs to develop empathy for victims of offences and programs to foster positive Aboriginal identity are being expanded.

(c) Leisure, recreation and cultural activities (Article 31)

Article 31

1. ***States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate in cultural life and the arts.***

2. ***States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.***

Federal matters

1307. The Federal Government recognises the right of the child to rest and leisure, play and appropriate recreational activities. Following some structural reform of the Department of the Environment, Sport and Territories (see the Australian Sports Commission below), the Federal Government is currently developing a proposal for its role in recreation over the next several years. Federal organisations relevant to this Article are listed below.

1308. The right of the child to participate in Australian cultural and artistic life is also discussed in Part D (c), Civil rights and freedoms, Freedom of expression and (d), Access to appropriate information.

Australian Sports Commission

1309. Sports related functions of the Department of Environment, Sport and Territories have recently been transferred to the Australian Sports Commission (ASC). One of the roles of the ASC is to facilitate access to sport for all young Australians in cooperation with State departments of sport and education. This is the particular task of the National Aussie Sport Unit at the ASC.

1310. Aussie Sport is an initiative committed to the development of young people through sport. The programs are designed to develop sporting skills, promote fun and enjoyment, encourage broad participation and fair play. The programs vary according to the sporting needs of young people at different stages of their physical and social development.

1311. The programs listed below are designed to complement school physical education programs and sporting club programs.

- Sportstart is a resource designed to help and encourage parents and care givers to provide, and be involved with play opportunities for young children. Sportstart reinforces the basic movement skills for children.
- Sport It is a primary school program which enables teachers to implement a series of fundamental motor skills lessons in six skill areas.
- Modified Sport is the games program currently operating with the co-operation of over 40 sports.
- Sport - Everyone's Game promotes Sport for All, regardless of gender background or ability level.
- Sport Search is a computer-based sport counselling package for 11 to 17 year olds. The aim of the program is to provide students with feedback regarding sports they may enjoy and achieve success in.
- Sportsfun is a school-based leadership program which develops young people's leadership skills. It provides a sport experience for primary school children conducted by secondary school teachers.
- CAPS (Challenge, Achievement and Pathways in Sport) is a sport-based leadership program which encourages young people aged 14 to 20 to become involved in training programs in the areas of coaching, administration, umpiring/refereeing, officiating, sport, health and participation.
- Aussie Sport Leaders offers a range of leadership approaches designed with the assistance of Aussie Sport staff, to suit any client group needs.

1312. In addition to these programs, State Aussie Sport Units have developed other programs to meet their State or regional needs.

Australian Sports Drug Agency

1313. The Australian Sports Drug Agency (ASDA) promotes fair play and healthy competition through its education programs which are targeted both at school children and elite junior athletes in sporting organisations. ASDA's education programs emphasise the health benefits of sport, the ability of the child to participate fairly and equally without drug use, and endeavour to inculcate a negative attitude towards drug use. Most of ASDA's education programs are developed in close consultation with State and Territory Government agencies, schools and sporting organisations. ASDA aims, amongst other things, to ensure that Australian athletes are able to compete in sport which is free from banned doping practices and to this end advocates the international adoption of consistent and effective anti-doping programs.

Australian Children's Television Foundation

1314. The Australian Children's Television Foundation (ACTF) is a public company which is supported by and receives financial assistance from the Federal, State and Territory Governments. The principal functions of the Foundation are to:

- encourage (through assistance, script development funding and equity investment) and undertake the development and production of television programs and other audiovisual media for children to improve their quality and suitability for the viewing audience;
- promote issues relating to children's television within the industry and the community; and
- provide a source of information on all aspects of television relevant to children.

1315. Over the past decade the ACTF has improved the production environment of, and made a significant difference to, children's television in Australia. The foundation has invested in both the script development and production of telemovies, mini-series and one-off dramas and encouraged wider industry involvement in children's media. The foundation has produced 115 hours of programming. The ACTF's programs have received more than 45 awards both nationally and internationally.

1316. The ACTF develops books and teacher/parent materials to accompany all of its programs. To date, more than 650,000 publications associated with Foundation programs and 65,000 videotapes have been distributed in Australia. In March 1995, the ACTF hosted the first World Summit on Television and Children which was attended by 637 delegates from 71 countries. The summit addressed the need to achieve a greater understanding of developments in children's television around the world; to raise the status of children's programming; to draw to the attention of key players in broadcasting the importance of issues relating to children; and to agree on a charter of guiding principles in children's television.

National Science and Technology Centre

1317. The function of the National Science and Technology Centre, located at Canberra, is to increase public awareness and interest in science and technology by providing the opportunity for all Australians to experience first hand the principles of some important scientific and technological phenomena. The Centre achieves this through a number of programs most of which are directed towards children.

Festival of Television for Australian Children

1318. As part of the Government's Distinctly Australian cultural package, the Department of Communications and the Arts staged the first Festival of Television for Australian children in March 1995. The week-long Festival was broadcast on the three commercial television networks, the Special Broadcasting Service, and satellite and community television services, to ensure access to the greatest number of Australian children.

1319. Programs chosen for the Festival were culturally diverse and of a very high quality. Educational material, developed by a panel of teachers, was also provided to encourage the active participation of children in the Festival. Programs broadcast as part of the Festival were in addition to the normal programming available to children.

Australian Film Finance Corporation Ltd

1320. The Australian Film Finance Corporation was established in July 1988 as a wholly owned Government company. It is the Federal Government's main agency for financially supporting the Australian film and television industry. The Corporation invests in feature films, telemovies, mini-series and documentaries that are 'qualifying Australian Films'.

1321. In the 12 months to June 1984 the Corporation invested a total of $282.3 million in films which had a total budget of $118.1 million. The Corporation invested $20.1 million in five mini-series for children which included Lift Off 2, Ocean Girl 2 and Spellbinder.

Film Australia Ltd

1322. Film Australia is an independent company wholly owned by the Federal Government. Its primary objectives are to provide a unique long-term record of Australian national life through the production of film and television programs dealing with matters of national interest to Australia.

1323. As part of its investor-funded activities Film Australia has recently been involved in three children's productions, Escape from Jupiter, Johnson and Friends - Series 111 and Napoleon.

Australian Film Commission

1324. The Australian Film Commission (AFC), the Federal Government's primary developmental film agency, has been involved in supporting children's television and film over a number of years and recognises the particular and special needs of this sector. During the 1994-95 financial year, the AFC contributed to children's television and film production and development through its funding of the following events:

- the World Summit on Children's Television ($50,000);
- Australian Teachers of Media - ATOM Awards for non-feature films, video and multimedia formats for education ($44,900); and
- Small Screen, the Australian Council for Children's Film and Television Newsletter ($10,000).

1325. The Commission's Marketing Branch provides administrative support for festivals and special events as well as support to filmmakers through marketing advice on which festivals and markets may be most appropriate for the sale of children's products. The Commission has printed a marketing handout entitled Children's Television Programming.

1326. The Commission's Film Development Branch has funded a total of 10 children's projects totalling $173,150 in 1994-95 (seven in development and three in production). Some of the projects span several years and include Brolga Man, Rabbit the Bear, Ferngully 2 - Pip's Adventure, Sir Katherine, Computer Kids, Bizzarolland, Vengeance, The Dreaming, Great Moments in Science, Lizzie's Library, The Web (Series 2) and Jester.

Television Production Fund

1327. In October 1994, as part of its Creative Nation initiatives, the Federal Government decided to establish the Australian Commercial Television Production Fund. Under the Fund, the Government will provide $20 million each year for the production of high quality drama, children's and documentary programs for broadcast on free-to-air commercial television, for three financial years commending in July 1995. These funds will be available to commercial broadcasting licensees and independent producers. Around $2 million per year will be allocated to children's programs.

1328. The programs supported by the Fund will be additional to the existing Australian content requirements for commercial licensees (see further under Part D(a), Civil rights and freedoms, Access to appropriate information, above). The Government expects the Fund to make a vigorous contribution to the production of new, high quality television programs and complement other Government programs that support the film and television production industry.

State matters

Australian Capital Territory

1329. In relation to Article 31.1, health is one of the core areas of learning in schools. It includes physical education and outdoor education. Students participate in a developmental program designed to teach them concepts, attitudes and skills needed to engage in play and recreational activities appropriate to their ages. The Curriculum Section of the Department of Education and Training provides a Health Framework to assist schools to develop their own curriculum in this subject area and these documents are monitored through the School Review process. An outdoor education facility at Birrigai, located in a bush setting outside Canberra, attracts many students from schools across the system to further develop their understanding and appreciation of outdoor recreation. Schools involve students in sporting activities and inter-school sporting meetings.

1330. In relation to Article 31.2, the Department of Education and Training supports the rights of the child to participate fully in cultural and artistic life. The arts are a core area of learning involving students in a developmental program of visual and performing arts throughout their schooling, monitored though the School Review process. The Australian Capital Territory school system sees the arts as important in their own right and encourages students to see involvement in the cultural and artistic life of the school and the community as integral to their lives. Programs which operate to support student involvement in the arts include a school band program, festivals and exhibitions (eg a young composers music festival) and, in many schools, after school care programs which incorporate art activities.

New South Wales

1331. The provisions of Article 31 are consistent with the policies outlined in the Hobart Declaration (see Part G (b), Education, leisure and cultural activities, Aims of education), and are implemented through the programs and policies of the Ministry for the Arts, and the Department of Sport, Recreation and Racing. Examples of relevant programs include:

- Youth Week: Activities ranging from dances to forums, cultural activities, publications and exhibitions.
- Sport and Recreation Offices: Through a statewide network of regional offices, community interest is stimulated in sport and recreation activities by providing a comprehensive range of opportunities, including tuition in various sports, aquatic programs, hobbies and specialist activities.

- Outdoor Recreation Education Programs: These include the vacation Camping program and the Weekend/Community Use Program which are residential camping centres throughout the State.

- Duke of Edinburgh Award Scheme: This scheme, which operates throughout Australia, is a program of cultural, practical and adventurous activities which is divided into four sections - Service, Expeditions, Skills and Physical Recreation.

- Sportsfun Leaders: Sportsfun offers Years 10, 11 and 12 students skills in training and experience as leaders/coaches in an Aussie Sports Program for primary age children conducted after school throughout the State.

- Olympics 2000 School Strategy: A program of activities including friendship networks, teaching resources and community sports gala days for school students to gain a greater understanding of the Olympic movement.

- School Sporting Programs: The Combined High Schools Sports Association and the New South Wales Primary School Sports Association provides a full range of activities for students.

- Learn to Swim Programs: Programs are for children who cannot swim, particularly those from non-English speaking backgrounds, young mothers with pre-school children and young people with disabilities.

- Theatre Program: Theatre companies are funded to include plays and programs catering for young people as an audience and as participants. The program makes provision for companies to use professional actors to entertain young people in schools and theatre and young people participating under the direction of professional theatre practitioners.

- Community Arts Program: Professional personnel are funded to work in art projects with young people, to be artists-in-residence and to organise youth festivals.

- Music Programs: Major funded activities include Musica Viva which conducts the education performance project to promote music education. Workshops, music camps, master classes, tutorials and demonstrations by other music organisations are also funded. The annual Rock Eisteddfod contested by New South Wales High Schools is managed and operated by a privately owned company.

- Schools Performing Arts: The Government's first Performing Arts High School opened in Newtown, in inner Sydney, in 1990 to allow students from all over the State, to pursue studies with an emphasis on dance, drama, music and rhythmic gymnastics.

Queensland

1332. Through the Queensland Government Youth Policy there is a commitment to improving young people's access to opportunities which develop their skills, realise their potential and contribute to their quality of life through participation in and appreciation of sport, recreation, art and cultural development and activities.

1333. The focus of many young people's arts development programs has been on ensuring opportunities for participation by young people. The principle of empowering the voice of young people has determined the priority for support. This has resulted in a very divergent arts practice among young people. Many young people participate in mainstream arts activities such as youth theatre and youth orchestras. They may become professional practising artists or arts consumers. Others may participate in a community based project and express their ideas and feelings in a way which has little connection with conventional notions of art and culture, for example, through street dancing and graffiti art.

1334. The Queensland Government regularly grants financial assistance to the arts. Young people are eligible to apply for the same. The processes of assessment of applications involves peer assessment.

1335. The Department of Tourism, Sport and Racing provides a number of services which include recreation, including entertainment, sports, tourism and the arts. A person may restrict participation in a competitive sporting activity to either males or females, if the restriction is reasonable having regard to the strength, stamina or physique requirements of the activity. However, this does not apply to sporting activity for children who are less than 12 years of age. In addition, a person may restrict participation in competitive sporting activity to people of a specified age or age group. This is designed to permit, for example, a competition to those under a particular age or within a particular age group.

1336. Existing strategies include:

- Aussie Sport: a program that aims to develop junior participation in sports.
- Sportsfun: a program where secondary school students are trained to act as volunteer coaches and sports teachers.
- CAPS Award Scheme: aims to involve young people in administration, coaching, officiating and refereeing.
- Queensland Academy of Sport: a program aimed at maintaining Queensland's sporting competitiveness at national and international levels.
- Sports Assistance Scheme: provides funding to State, regional and zone sporting associations.
- State Government grants for junior coaching.
- State Government grants for development of competitive sporting venues.
- State administration and coaching subsidies.
- Equity Unit (Sport and Recreation): aims to improve access and participation in sport and recreation for disadvantaged young people.

1337. Acknowledgment also needs to be given to the activities of voluntary organisations such as Young Men's Christian Association, Young Women's Christian Association, Police Citizens' Youth Clubs, Scouts, Girl Guides etc.

South Australia

1338. A balanced education is provided by all schools and includes the arts, sport and leisure. Particular opportunities are provided for students to join in major sporting, cultural and artistic events whatever their level of participation. A Come Out Festival to celebrate the arts is celebrated bi-annually by all schools (see further below). Annual music and dance eisteddfods are held which are supported by both metropolitan and country schools. Students' work is often the subject of prominent displays.

1339. The Children's Services Office encourages participation by individual children's services (such as pre-schools, child care centres, family day care and out of school hours care services) in general community events. Many services make such events the focus of their program for the day or week, and this often involves excursions to allow physical participation. Examples of community happenings where the above applies are Australia Day, Children's Book Week, National Child Protection Week, Children's Week and Universal Children's Day.

1340. The Children's Services Office also planned a range of activities to mark the International Year of Indigenous People and to promote Aboriginal participation in children's services.

Sport and Leisure

1341. The Division of Recreation, Sport and Racing within the Department of Housing and Urban Development provides a number of services and initiatives aimed at the provision of sporting experiences that encourage life long active participation. The Department of Education, Employment and Training, through schools, provides the delivery of a balanced physical education program in schools including whole body movement management, knowledge of games, fitness, outdoor education, aquatics and swimming.

1342. In relation to the Education Department, particular opportunities in sport and leisure through the South Australian Primary Schools Amateur Sports Association (SAPSASA) and the Secondary Schools Sports Association of South Australia (SSSASA) are provided for students from age eight and onwards. The Aussie Sport Unit in South Australia provides valuable sport resources to supplement the resources teachers may have at their disposal for the teaching of sport education at both the primary and secondary school levels.

1343. The Government Junior Sports Policy provides a framework and guidelines for the efficient and equitable delivery of all forms of junior sport through programs in schools and the community. The Policy provides opportunities for team providers and competition managers to:

- plan and implement appropriate levels of competition;
- offer a significant equal opportunity strategy - single sex competition to children 12 years and under with the specific aim of encouraging greater participation particularly by girls;
- offer quality programs for the development of talented children and teenagers;
- offer opportunities for the education of parents and teachers responsible for the delivery of junior sport; and
- establish and extend links between schools and community clubs ensuring a consistent and co-ordinated approach and the best utilisation of resources.

1344. Existing strategies include:

- The South Australian Sports Institute: provides professional, administrative and financial support to approved State sporting associations and other approved lead agencies for junior and adult elite sport.
- Government Junior Sports Policy: administered through the Division of Sport and Sports Development provides a consultative service relevant to the provision of quality sporting experiences for children and teenagers.
- Aussie Sport: this is a cooperative venture between the Australian Sports Commission, the Department of Education, Employment and Training and the South Australian Division of Recreation, Sport and Racing. The programs and services co-ordinated within the unit are designed to enrich the lives of young South Australians from five to 20 years, through quality sporting experiences that encourage life long active participation.
- Sports General Development: this program provides professional, administrative and financial support to approved State sporting associations and other approved lead agencies for junior and adult sport.
- The Women's Sport Unit: through the Division of Sport aims to ensure that there is equal opportunity for women and girls to participate in sport.
- The Aboriginal Sport Unit: through the Division of Sport aims to ensure that there is equal opportunity for Aboriginal athletes to participate in sport.
- The Disabled Sport Unit: through the Division of Sport has the responsibility of ensuring that there is equal opportunity for disabled athletes to participate in sport.

Artistic Events

1345. The South Australian Government has recognised the importance of Youth Arts as part of the arts industry, and the need to provide opportunities for young people to experience and be involved in the arts. These opportunities for young people are facilitated and co-ordinated by the South Australian Youth Arts Board (SAYAB) through its operating arm the Carclew Youth Arts Centre Inc. SAYAB has prepared a draft youth arts policy to address the key issues and policy directions for all young people in South Australia. This policy document is being circulated for public comment to enable SAYAB to provide youth arts programs and activities that are more responsive to the needs of young people. In 1992 the SAYAB received the following grants through the Department for the Arts and Cultural Heritage:

- $753,000 for youth arts organisations and individual practitioners; and
- $685,000 towards operation of Carclew and programs co-ordinated by Carclew.

1346. SAYAB is responsible for a grants program, Carclew Program and the Come Out Youth Arts Festival as follows:

- General Purpose Grants: towards the calendar year operational and program costs for companies that provide arts experiences for and by young people;
- Project Grants: grants of up to $3,000 are available to assist individual practitioners, youth arts organisations and community groups with specific projects in all art forms throughout South Australia;
- Carclew Program: Carclew is funded by State and Federal Government grants and administered within an approved budget from SAYAB to program a range of arts activities; and
- Come Out Festival Program: the Come Out Festival is a biennial State-wide Youth Arts celebration. The Festival received a dedicated grant from the State Government and functions in accordance with an approved budget from SAYAB.

Tasmania

1347. The principles and objectives which are enunciated in Article 31 are addressed in the Strategic Plan of the Department of Education and the Arts. They are an integral part of the health education curriculum/policy which is a compulsory element for all State primary and secondary schools. Where appropriate, the Department of Education and the Arts works closely with other Government agencies and professional organisations in meeting Australia's obligations under the Convention with respect to Tasmania. Individual schools have developed close links with their local Government authority in utilising services and sharing facilities which support the recreation needs of children.

Victoria

1348. The Victorian Government through the Ministry for the Arts provides direct services and funding programs which seek to extend access and participation in cultural life to all sectors of the community. A number of these are detailed below:

- Youth Arts Strategy: A draft policy statement has been prepared with the aim of increasing participation of all young people in the arts and making arts bodies more responsive to the needs and interests of young people.
- Children's Museum: The Children's Museum was established in 1985 within the Museum of Victoria. In 1990-91, 154,666 children and their families visited the Children's Museum.
- Kids' Flicks: A free program of children's films is offered in school holidays in three metropolitan venues. Films were attended by 52,000 people in 1990-91.
- Library Education Centre: In 1991 an Education Centre was established in the State Library of Victoria to improve students' access to library and other information materials and to assist students to develop research skills.
- Arts Education Services: Educational services are provided in most regional arts facilities, museums and galleries and the like, and in all the major cultural institutions. In 1990-91 attendances by children and young people at education programs were: Victorian Arts Centre, State Film Centre, Museum of Victoria, Planetarium and National Gallery of Victoria.
- Artists-in-Schools: The Artists-in-Schools program, a residency program employing professional artists to work in school communities, was established as a pilot program in 1978 and became fully operational in 1981. In 1991, 33 programs were funded.
- Arts and Education Committee: This is a joint committee established to promote arts in education and develop resource material.

1349. The Victorian Government through the Department of Sport and Recreation provides financial and other assistance to local Government and community agencies for research, planning and implementation of sport and recreational programs. Particular attention is given to those sections of the community which are disadvantaged. Examples of programs which are of specific relevance to the Convention are given below:

- Family Outdoor Experience Program: This program aims to provide outdoor recreation experience for adults and their children.
- Duke of Edinburgh's Award Scheme: The Victorian Government provides administrative support for this program. The Scheme aims to encourage young people to participate in sport and recreation activities and community services.
- Community Access Grants: These grants are provided to increase access to recreation by people with intellectual disabilities.
- Youth Health and Activities Program: This program endeavours to provide active recreation opportunities for young people during school holidays.
- Playgrounds and Recreation Association of Victoria: The Government funds the Association to provide information and advice on play and playground design and safety.
- Camping: Through the Department of Sport and Recreation the Government resources camping facilities and programs which broaden the range of outdoor recreation activities available to young people.

- Junior Sport: The Department of Sport and Recreation coordinates the Australian Sports Commission Junior Sports Development Campaign in Victoria, which aims to promote participation in sport and leadership by children in schools.
- Recreation Facilities: The Government jointly funds the construction of multipurpose community recreation facilities at the local government level.

Western Australia

1350. The Department of Community Development aims to promote children's rights to pursuits outlined in article 31.1. Leisure and recreation are considered in the overall planning for children in care and for these being supervised for offending.

H. SPECIAL PROTECTION MEASURES

(a) Children in situations of emergency

(i) Refugee children (Article 22)

Article 22

1. *States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.*

2. *For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organisations or non-governmental organisations co-operating with the United Nations to protect and assist such a child and trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.*

Federal matters

Refugee protection

1351. As a Party to the 1951 UN Convention on the Status of Refugees, as amended by its 1967 Protocol, (the Refugees Convention) Australia is committed to the implementation and observance of its obligations as laid down in the convention.

1352. There have been many developments in Australia's onshore refugee policy on the implementation of the Refugees Convention. Before 1 September 1994 asylum seekers were required to make two applications to stay in Australia: an application for refugee status and an application for an entry permit. On 1 September 1994 the

Protection Visa was established by amendments to the Migration Act 1958, under which asylum seekers in Australia could apply for permanent residency.

1353. People who seek Australia's protection have their claims to be a refugee assessed according to the definition stated in the Refugees Convention. The Protection Visa is the mechanism by which Australia offers asylum to persons who fall under the Refugees Convention. If successful, applicants are granted a Protection Visa allowing them to stay permanently in Australia.

1354. All members of the family unit are applicants for protection visas in their own right with an opportunity to make separate claims if they wish. This is intended to ensure, among other things, full exploration of all claims in the refugee decision making process including those claims made by or relevant to children. All members of the family unit of a person granted a protection visa are also granted the same legal status if they are also in Australia.

1355. Applications for a protection visa are assessed by officers of the Department of Immigration and Ethnic Affairs appointed as delegates of the Minister. These decision-makers consider relevant information about the applicant's country of origin as well as the claims and information provided by each applicant. An extensive collection of country information focusing on human rights issues is held and maintained by the Department of Immigration and Ethnic Affairs for use in the refugee decision making process. Decision making procedures based on current rules of natural justice ensure fair consideration of all claims.

Refugee Review Tribunal

1356. Under the Migration Act 1958, an unsuccessful applicant for a Protection Visa has the right to have that decision reviewed by the Refugee Review Tribunal. The Refugee Review Tribunal is an independent statutory body which provides merits review of refugee status decisions. The Tribunal uses a non-adversarial approach to the testing of claims. The Tribunal may exercise all the powers and discretions of the decision-maker and may affirm, vary, set aside or substitute a decision, or, in certain cases, remit the matter for reconsideration to the Department of Immigration and Ethnic Affairs.

1357. The Tribunal is required to provide review that is fair, just, economical, informal and quick. It is not bound by technicalities, legal forms or rules of evidence and must undertake its proceedings according to the requirements of substantial justice and with regard to the merits of the case. Decisions of the Tribunal are published, but the identity of the applicant or applicants remains confidential.

1358. The Principal Member of the Tribunal may refer a decision directly to the Administrative Appeals Tribunal where he or she considers that the matter involves an important principle or issue of general application. The Administrative Appeals Tribunal may then exercise the same review powers as the Tribunal.

1359. The Minister also has a non-compellable discretion to substitute a more favourable decision to the applicant in place of a decision made by the Tribunal or the Administrative Appeals Tribunal, if he or she considers that it is in the public interest to do so. Review of an adverse decision by the Refugee Review Tribunal or the Administrative Appeals Tribunal lies to the Federal Court on a question of law, with further judicial review by the High Court. Protection visa applicants may only seek judicial review of their cases after the Refugee Review Tribunal has made a decision on the application for review.

1360. The Minister responsible for immigration matters may issue a conclusive certificate which has the effect of precluding a decision from review. The conclusive certificate must state the reasons of public interest as to why the decision is not to be reviewed and must be tabled in Parliament. This provides an opportunity for Parliamentary scrutiny of the decision to preclude review. At the end of 1995, 14 such certificates had been issued by the Minister, all in relation to one group of unauthorised boat arrivals. The certificates were issued having regard to the Comprehensive Plan of Action for Indochinese Refugees.

Humanitarian Program

1361. Australia provides resettlement to refugees and those in humanitarian need through the (offshore) Humanitarian Program and has the largest per capita humanitarian resettlement program in the world. The Program has three components, Refugee, Special Humanitarian and Special Assistance Categories. Minors seeking resettlement in Australia are considered on a case-by-case basis against the specific criteria of the Refugee and Special Humanitarian Sub-programs. The cases of unaccompanied minors receive priority processing and at all times the best interests of the child are a primary consideration.

Detention of refugee children

1362. The Migration Act 1958 authorises the arrest and detention of unlawful non-citizens. An unlawful non-citizen may be a person who held a visa which has expired or a person who has arrived in Australia without authority to enter. Between November 1989 and 15 September 1995, a total of 1,927 unauthorised persons, including children, arrived in Australia by boat and 56 children have been born to them in Australia. Of these: 833 have departed Australia to return to their home country or travel to another country; 433 have been approved to remain here; 644 are in detention awaiting decisions on applications or appeals, the outcome of litigation or removal from Australia. Of those in detention 215 are children. One hundred and ninety four children are covered by a Memorandum of Understanding with China. The Memorandum of Understanding provides that people verified as falling within its terms are to be returned to China and accordingly are not eligible to apply for refugee status.

1363. Wherever possible, children are not taken into custody. The Migration Regulations provide that the Minister may grant a visa to a non-citizen minor where it is considered to be in the best interests of the child that the minor be released into the care of an Australian citizen, Australian permanent resident or New Zealand citizen. Since 1 September 1994 this has been the case even where the application for a protection visa has been refused and the decision is subject to judicial review.

1364. In certain situations the release of a minor from detention may not be in the best interests of the child. For example, where a child's parents or guardian must be kept in custody and it is considered not to be in the best interest of the child to separate them from their parent or guardian, the child would be kept with their parent or guardian. Every effort is made to ensure that the period of detention for minors and, indeed, all persons, is kept to a minimum. Persons who are in detention have access to educational, health and welfare services. An education program covering aspects of pre-primary and primary education is in place for children at the two centres for long term detention of unauthorised boat arrivals. Recreation facilities at these centres include gardening, ball sports, sewing, television and video, and some gymnasium equipment.

1365. Legal assistance is funded by the Federal Government and is available to all asylum seekers in detention, including unauthorised boat arrivals, to assist in the preparation and lodgement of protection visa applications. This assistance includes preparation of initial claims, and applications for review to the Refugee Review Tribunal under the two-stage refugee determination process. Applicants are also free to obtain assistance from other sources such as private solicitors or community groups. The interpreting facilities are also provided free of charge.

Asylum Seeker Assistance Scheme

1366. The Asylum Seeker Assistance scheme (ASA) is available to asylum seekers in greatest need at the primary and Refugee Review Tribunal stages, if they:

- have been waiting for a protection visa decision for six months or more, are suffering financial hardship, and have no employment nor any other lawful viable source of income.

1367. The scheme aims to help asylum seekers without means of support or disposable assets to meet their basic food and shelter needs. The scheme also provides for the treatment of urgent or life threatening medical conditions, and includes general practitioner and maternity consultations. Subsidised pharmaceuticals are available to those receiving assistance, on the same basis as Australian nationals in similar circumstances.

1368. The scheme is administered nationally by the Australian Red Cross Society, with the Department of Immigration and Ethnic Affairs responsible for determining and on-going monitoring of applicant eligibility. The Department spent $14.9 million on the scheme for the 1993-1994 financial year and an additional $1.5 million advance for the first month of the 1994-1995 financial year. For the 1993-1994 financial year, the monthly average number of clients assisted, including dependants, was 2,737.

Work rights

1369. Applicants for protection visas and their dependants may, through the grant of a bridging visa, gain access to unlimited permission to work in situations where, at the time of application for the protection visa, they were lawfully in Australia. Where asylum seekers were not lawfully in Australia at the time of application for a protection visa and are not in detention, they may still apply for another bridging visa which grants permission to work provided they can show they have a 'compelling need to work' and are suffering financial hardship.

Programs for refugee children

1370. All refugee minors, ie those granted permanent residence in Australia, aged 16 years and over are eligible to receive the same health and welfare support as all young people.

1371. In addition the Department of Immigration and Ethnic Affairs administers a number of programs which focus specifically on the settlement needs of refugee children. These include:

- Maintenance allowance for unattached refugee minors who are less than 16 and full time students.
- The Grant-in-Aid (GIA) Scheme. This scheme is an application-driven scheme administered by the Department to help migrants (including refugees) to settle in Australia. Under the scheme, financial assistance is provided for up to three years to ethnic and other non-government organisations towards the cost of employing workers

to implement specific programs which help migrants and refugees. The GIA scheme serves to address issues such as housing, employment, health, education and access to language tuition. Issues affecting refugees including refugee youth are particularly addressed under the GIA scheme.

- Migrant Access Projects Scheme. This scheme provides funding towards the cost of projects likely to improve services to migrants settling in Australia.

1372. The Federal Government has also funded transitional services to help refugee children adjust to life in Australian schools. The funds have been allocated for a number of purposes, including the salaries of specialist language teachers and teachers aides, assistance with teaching and learning materials and emergency classroom accommodation.

1373. In the Australian Capital Territory health services are provided specifically for young people of refugee origin, some of which are run in conjunction with the migrant/refugee services offered by the Migrant Health Unit. Services include:

- interpreting services for all in need, and provisions for access to other languages;
- services (interpreting and other) dealing with issues such as torture and trauma, domestic violence and sexual assault;
- educational and informational material;
- workshops concerning cross cultural communication for nursing staff, especially in the maternity and paediatric areas of the hospital;
- services to reduce maternal morbidity rates within some groups of non-English speaking women; and
- pre-employment courses for young unemployed people from non-English speaking countries.

Guardianship arrangements for children

1374. In 1946 the Immigration (Guardianship of Children) Act was introduced to provide a legal status for children who had come to Australia during World War II. Since then this Act has lent itself to a variety of situations, covering, for example, the many unattached refugee minors who entered Australia after the fall of Saigon in 1975 and the evacuation of East Timor in 1975.

1375. Unaccompanied minors accepted by the Australian Government to settle in Australia fall into two main categories: 'unattached' and 'detached'.

1376. An 'unattached' minor is a person under the age of 18 who enters Australia and does not have an adult relative under whose care he or she can be placed. These children become wards of the Minister for Immigration and Ethnic Affairs who delegates his guardianship responsibilities to the Director-General of the child welfare authority in each State or Territory. These children are thereby assured of access to their general welfare requirements as well as access to legal rights.

1377. A 'detached refugee minor' is a person under 18 who enters Australia in the care of a person (or for the purpose of living under the care of a person) who is a close adult relative. The State welfare authorities have statutory responsibility for the welfare of these children in their particular States and they have the right and responsibility to intervene in cases where negligence or mistreatment is suspected.

1378. As a result of concerns expressed by State welfare departments and community organisations that unaccompanied refugee minors were experiencing particular settlement difficulties, a Federal-State cost-sharing program was introduced in 1985 to provide welfare support for this group of children and their caregivers.

1379. All refugee children entering Australia without parents are covered by the program. Workers employed by State child welfare departments provide counselling and settlement support to the minors and their caregivers.

1380. For example in Queensland, the Division of Community Services Development has a refugee children program which is administered by the Trustees of the Sisters of Mercy. Under this arrangement the Trustees of the Sisters of Mercy provide a monthly report to the Regional Manager of the South West (Queensland) Division of Community Services Development. The program's target group are unattached refugee minor children aged under 18 years. In 1993 there were 78 unattached refugee minor children in Queensland under the guardianship of the Director-General of the Department of Family Services and Aboriginal and Islander Affairs.

Non-refoulement

1381. As a Party to the 1951 United Nations Convention relating to the Status of Refugees, and the 1967 Protocol relating to the Status of Refugees, Australia is obliged not to expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion (Article 33(1)). Australia also considers its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment not to expel or return a person who may be subject to torture when deciding whether to deport or extradite a non-citizen who has committed a serious crime.

(ii) Children in armed conflicts (Article 38), including physical and psychological recovery and social reintegration (Article 39)

Article 38

1. *States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.*

2. *States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.*

3. *States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.*

4. *In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.*

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Federal matters

Age for enlistment

1382. The minimum age for voluntary enlistment in the Australian armed forces is as follows:

- Navy: 16 years
- Army: 17 years

- Air Force: 17 years

1383. Normally, new recruits go to a military training establishment. This might be long-term, such as the four year course at the Australian Defence Force Academy for officer cadets or nine months training for general recruits, or short term, such as the three months basic entry training for soldiers, followed by further training or military specialisation. Current practice could result in general recruits, after their nine month training period, joining regular units shortly before their 18th birthday.

1384. Australia participates in the UN Working Group charged with the elaboration of a protocol on the involvement of children in armed conflict. Personnel in the Australian armed forces under the age of 18 years are not normally deployed to areas which would result in their direct involvement in armed conflict. In the light of the development of the protocol, the issue of recruitment of volunteers under 18 years and the direct participation of persons under 18 years in hostilities is under active consideration by the Australian Government.

Torture and trauma services

1385. Torture and trauma services have been established in all capital cities to assist people who have been tortured or suffered traumatic experiences associated with organised violence in their own country or in other countries. Torture and trauma victims are predominantly refugees and special humanitarian program entrants. Some of these services have been established for a number of years while others are more recent. A number of them receive State and Territory health funding.

1386. During the reporting period covered by this report torture and trauma services have been provided by two Federal Departments in conjunction with relevant State services. Until 1994 the Department of Immigration and Ethnic Affairs provided funding under the Grant-in-Aid Scheme and the Migrant Access Projects Scheme to assist various torture and trauma services. Examples of grants which were made included:

- New South Wales Service for the Treatment and Rehabilitation of Torture and Trauma Survivors - awarded in 1991-92, two three-year grants-in aid (total value $100,880 per annum);
- The Rehabilitation Unit for Survivors of Torture and Trauma in Queensland. The organisation operates from the Department of Clinical Psychiatry, Mater Children's Hospital in Brisbane - grant awarded in 1992-93 (grant value $50,000) for one year;
- STTARS in South Australia - grant awarded in 1992-93 (grant value $41,000) for one year to employ a worker to assist traumatised refugees;

- The Society of St Vincent de Paul in Tasmania - grant awarded in 1992-93 (grant value $50,000) for one year to provide assistance to torture survivors and their families;
- Victorian Foundation for Torture Victims - awarded in 1991-92, two grants-in-aid (total value $100,880 per annum);
- Association for Services to Torture and Trauma Survivors in Western Australia - grant awarded in 1992-93 (grant value $50,000) for one year to establish specialised services for torture victims; and
- Torture Rehabilitation and Network Services of the Australian Capital Territory - grant-in-aid awarded in 1990-91 (grant value $25,455) per annum.

1387. From 1994-95, the responsibility for torture and trauma services has been with the Department of Human Services and Health. From 1994-95 to 1997-98, the Government will provide $5.2 million dollars to help refugees and migrants to this country who have survived torture and trauma.

1388. Funding will be provided (as set out below) to a service in each State and Territory to assist the survivors of trauma and torture. The funds will be used to provide initial counselling to survivors and to help them access mainstream health and health-related services. Support for a range of other activities, including the training of mainstream health and health-related service providers in the special needs of survivors and the development of volunteer networks to help survivors access these services, will also be provided.

1389. A major expected outcome will be a reduction in short and long term health problems for this group.

1390. In the period July 1994 to June 1996 services funded in each State and Territory are as follows:

Australian Capital Territory:	Torture Rehabilitation and Network Services $115,000
New South Wales:	Services for the Treatment and Rehabilitation of Torture and Trauma Survivors - $345,000
Northern Territory:	Agency still to be determined - $60,000
Queensland:	The Queensland Program of Assistance for the Survivors of Torture and Trauma - $133,000
South Australia:	Survivors of Torture and Trauma Assistance and Rehabilitation Service - $125,000
Tasmania:	Phoenix Centre - $95,000

Victoria:	Victorian Foundation for Survivors of Torture - $345,000
Western Australia:	Association for Services to Torture and Trauma Survivors - $138,000
TOTAL:	$1,356,000

(b) Children in conflict with the law

(i) The administration of juvenile justice (Article 40)

Article 40

1. *States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*

2. *To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:*

    (a) No child shall be alleged as, be accused of, or recognised as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

    (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

        (i) To be presumed innocent until proven guilty according to law;

        (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

        (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair

hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of or recognised as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programs and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Federal matters

1391. In general the administration of juvenile justice is a matter which falls within the jurisdiction of the States and Territories.

Inquiry into Children and the justice system

1392. In recognition of Australia's obligations to protect children in their dealings with the justice system the Federal Attorney-General announced that the Federal Government would provide the Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission with terms of reference to examine and report on children and the legal process. In particular the Commissions are to inquire and report on:

- legal advice and access for children and young people and their legal representation before courts and tribunals in the exercise of Federal jurisdiction;
- the appropriateness of procedures for pre-trial investigation and taking of evidence from children and young people
- the appropriateness of rules of evidence for, and procedures for taking evidence in courts and tribunals from children and young people;
- the question of the desirability of children giving evidence in family law and associated proceedings and the appropriate safeguards in such circumstances;
- sentencing of children and young people for Federal offences;
- the treatment of children and young people convicted of Federal offences
- advocacy of the interests of children and young people before courts and tribunals
- the appropriateness and effectiveness of the legal process in protecting children and young people as consumers
- the particular needs in these and related areas of children and young people for whom the Federal Government has a special responsibility; and
- any related matters of particular relevance to Australia's remote communities.

Criminal responsibility for federal offences

1393. The age of criminal responsibility for Federal offences varied until recently in different parts of the country as State and Territory laws applied. The age has been standardised at 10 years or more as part of the development of a Model Criminal Code which will be applied in all jurisdictions. At the Federal level steps have been taken to implement the approach of the Model Criminal Code in relation to the age of criminal responsibility. Those amendments commenced on 16 September 1995. Further, a child over 10 years of age but under 14 years can only be criminally responsible for an offence if the child knows that his or her conduct is wrong. The question of whether a child knows that his or her conduct is wrong is one of fact and the burden of proving this is on the prosecution.

1394. The Federal Crimes Act 1914 provides for court supervised procedures that apply after a person under the age of 18 years has been arrested and detained for a Federal offence. This issue is discussed in Part H (b) (ii), Special protection measures, Children in conflict with the law, Children deprived of their liberty, below.

Legal assistance

1395. The Federal Office of Legal Aid and Family Services administers the Federal Government's Community Legal Centre Program which provides funds to generalist community legal centres and specialist women's legal services and youth legal services. Community legal centres provide access to legal services for disadvantaged persons who currently are unable to access services.

1396. There are, however, currently very few community legal services, as distinct from mainstream services provided by legal aid commissions, that operate specifically to serve the legal needs of children and young people. This is so despite the fact that, children and young people under the age of 18 years of age make up just over 25 per cent of the Australian population and encounter legal problems in areas such as family law, juvenile crime and child protection.

1397. To address the legal needs of children and young people, the Government announced in May 1995 that it will provide funding for four new specialist children's and youth lawyers. Three of the positions will be attached to existing services such as community legal centres or community youth services and the fourth position will be attached to the National Children and Youth Law Centre to provide services for the New South Wales community. Alongside this position, $65,000 per annum has been provided to the National Centre to support its national activities on behalf of children and youth. The National Children's and Youth Law Centre was established as a joint project of the University of Sydney, the University of New South Wales and the Public Interest Advocacy Centre in 1993. It aims to improve the law, legal systems and legal services in order to promote, protect and enforce the rights of children and young people.

1398. Women's legal centres provide a range of services for women clients including advice and information, advocacy, legal representation and court support services. These centres have special expertise in dealing with domestic violence and family law matters which impact directly on children.

1399. To address the inequities Australian women have faced in obtaining access to legal services the Federal Government announced in May 1995 that it will provide $17.3 million over four years to establish a national network of women's legal services, ensuring that at least one specialist women's legal centre is located to serve the legal needs of women in every State and Territory.

1400. The Federal Government also provides funding to State and Territory Legal Aid Commissions. These Legal Aid Commissions rank matters involving the protection of a child's rights as having high priority for receiving assistance. They give highest priority to cases where an individual's liberty is at risk, and cases where the welfare of a child, or a child's rights, need to be protected.

1401. In May 1995 the Government announced in the Justice Statement that it would provide an additional $16.8 million over the next four years to legal commissions to enable commissions to deliver more services in civil and family law.

1402. Aboriginal and Torres Strait Islander children are in addition able to obtain legal assistance from community-based Aboriginal and Torres Strait Islander organisations. Aboriginal and Torres Strait Islander Legal Services received over $30 million in grant funding during 1993-94 from the Aboriginal and Torres Strait Islander Commission. These services exist in all States and the Northern Territory.

Interpreter projects for people of non-English speaking backgrounds

1403. The Federal Government provides funds for interpreters in most Federal courts. However, the Government acknowledges that currently there is a lack of qualified interpreters with the necessary understanding of legal language and processes. There is also insufficient available information and training about the proper use of interpreters and about ways to access interpreters. A shortage of adequately qualified interpreters in the legal system has been the subject of criticism by the ethnic community. The Access to Justice Advisory Committee and the Australian Law Reform Commission have recommended that qualified interpreters be available in courts for both parties and witnesses of non-English speaking backgrounds.

1404. In response to this problem the Federal Government announced in May 1995 that it will conduct detailed research on the disadvantages faced by people of non-English speaking backgrounds in the justice system. The research will focus on determining levels of unmet demand for interpreters in the legal system and on developing strategies to increase awareness of, and access to, interpreting services by people of non-English speaking backgrounds. The Government will also establish a national pilot program of specialist training courses for ethnic language interpreters in the legal system.

1405. During 1996-97 professional development programs will be developed in a range of federal courts/tribunals to assist judges, tribunal members and court staff in working with interpreters. In addition, increased community education will provide more information to clients on the availability of interpreter services and the rights of clients of the courts to access them.

Aboriginal and Torres Strait Islander interpreters project

1406. The Royal Commission into Aboriginal Deaths in Custody recommended that Governments increase the availability of Aboriginal language interpreters. The Commission emphasised that there was a serious chance of injustice where interpreters were not available and Aboriginal people were unfamiliar with court proceedings.

1407. The Federal Attorney-General's Department has developed a series of pilot projects for the training of court interpreters in Aboriginal languages. The project has already produced seven accredited Pitjantjatjarra interpreters. From two pilot projects being conducted in Queensland and the Kimberley area, eight students gained accreditation at the end of 1994 in Torres Strait Creole and Aboriginal Kriol. Further programs are being developed in Perth and Darwin in close co-operation with local communities.

1408. The particular position of Aboriginal and Torres Strait Islander people in relation to the criminal justice system makes the need for an expansion of the program critical. In May 1995 the Federal Government announced that it will commit $1.4 million over four years for training programs for interpreters in Aboriginal languages. A registration system for trained interpreters will be established. In addition, course materials will be refined and community education programs will be developed to enable interpreter training to be spread progressively through Aboriginal and Torres Strait Islander communities.

State and Territory matters

Australian Capital Territory

1409. Under the Children's Services Act 1986 a child below the age of eight is presumed to be incapable of committing an offence against a law in the Australian Capital Territory. Where a child is between the ages of eight and 14 there is a rebuttable presumption that the child is incapable of committing an offence because he or she did not have the capacity to know that the particular act or omission was wrong.

1410. The police have a discretion to caution young offenders, which they may exercise in the case of first offenders, depending on the type of offence and on the young person. The Children's Services Act 1986 also provides that a police officer may not institute a prosecution against a child for an offence unless an authorised officer (the Commissioner of Police, the Deputy Commissioner, or their delegate) has consented to the institution of the prosecution. In consenting to the prosecution, the authorised officer must take into account the seriousness of the offence, the evidence available, the age of the child, and a number of other factors (section 33). Section 33 was amended in 1991 so that a police officer need not obtain this consent if the child is licensed to drive a motor vehicle, and has apparently committed an offence arising out of the use of a motor vehicle.

1411. Under the Children's Services Act 1986, when a child (that is, a person under the age of 18 years) is charged with an offence the police must forthwith take all reasonable steps to notify a parent of the child of the charge, of the child's location and of the time and place when the child will be brought before a court. The same legislation prevents police interviewing a child unless a person such as the child's parent, a relative, a legal representative or some other appropriate person acceptable to the child is present.

1412. Under the Crimes Act 1900 and the Children's Services Act 1986 there are limits on the circumstances and procedure under which:

- a child may be strip searched;
- identification material may be taken from a child;
- an identification parade can be held for a young person; and
- forensic samples may be taken from the body of a young person.

1413. Where a child is charged with a Federal offence or an offence that is punishable by imprisonment for a period greater than 12 months then the procedures described under Part H (b)(ii) Children deprived of their liberty, Protection for juveniles in police custody, Federal Crimes Act 1914, below, apply.

1414. Children are entitled to legal representation, and are also entitled to refuse legal representation if they wish. Section 167 of the Children's Services Act 1986 allows a court, in proceedings under the Act, to adjourn proceedings to enable a child to obtain legal representation, and to give the child such advice and assistance as he or she needs to obtain legal representation. The Legal Aid Commission's guidelines allow funding for child representation in all but traffic offences and circumstances where the child has access to private funding. The Legal Aid Office has historically played a major role in representation before the Children's Court. Duty solicitors act for children on bail applications and may continue to appear for a child until the conclusion of the proceedings.

1415. The Australian Capital Territory does not provide for special children's magistrates in dedicated children's courts as do some other States in Australia. Young offenders are dealt with by the Magistrates Court convened as a special Children's Court.

1416. The Australian Capital Territory has introduced a new scheme which is intended to bring young people (ie persons under the age of 18) who are charged with offences before the courts as quickly as possible. (Previously the delay between the charge and court appearance could be up to six months.) Under the new scheme, when a young person is charged with an offence the person and his or her parents may sign a voluntary agreement to attend court.

1417. The new scheme enables the police to proceed without having to arrest the young person or issue a summons. In return for signing an agreement, the police undertake to have the case in court within 10 working days. When the case reaches court it is dealt with in the normal way.

1418. The right to remain silent is a common law one, which is in force in the Australian Capital Territory. The Evidence Act 1971 also provides that in a criminal proceeding, the person charged is a competent but not a compellable witness.

1419. The Children's Services Act 1986 provides for two methods of reviewing decisions concerning children. First, a matter may be reviewed in the Children's Court under section 48 of the Act. Secondly, a decision of the Children's Court may be appealed in the Supreme Court. Every child will have an interpreter provided where necessary.

1420. The Evidence (Closed-Circuit Television) Act 1991 makes it a general rule that children, other than child defendants, who give evidence in Territory courts do so using closed circuit television from a place outside the courtroom. The aim of the legislation is to alleviate, to some extent, the trauma associated with giving evidence in court. The exclusion of child defendants from the legislation will be reviewed.

1421. Where the Children's Court is sitting, the hearings are in camera, and only interested parties are allowed in the courtroom. The magistrate may give special permission for the press to be allowed into the courtroom, but they may not report the names of the child or children concerned. Permission is given to the press very infrequently.

New South Wales

1422. In New South Wales a child under the age of 10 years is not criminally responsible for any act or omission. Section 5 of the Children (Criminal Proceedings) Act 1987 states that it shall be conclusively presumed that no child who is under the age of 10 years can be guilty of an offence. A child under the age of 14 years is not criminally responsible for an act or omission unless it is proved that at the time of doing the act or making the omission he or she had the capacity to know that he or she ought not do the act or make the omission.

1423. On 13 March 1995 the Children (Parental Responsibility) Act 1994 came into force. The legislation enables courts to require parents to be present during criminal proceedings against children, to require children to give undertakings to submit to parental supervision and to require parents to be present at court in the event of a breach of such an undertaking. The court may also require parents to give undertakings concerning the future behaviour of children and other matters or to give security (whether by the deposit of money or otherwise) for the good behaviour of the child until the child attains the age of 18 years or such other period as appropriate. The legislation further enables a court to require a child that has been found guilty of an offence and the child's parents to undergo family counselling and makes it an offence for a parent, by wilful default or by neglect to exercise proper care and guardianship, to contribute to the commission of an offence by a child.

1424. Part 3 of the Children (Parental Responsibility) Act 1994 enables a police officer to remove from a public place a person whom the police officer believes on reasonable grounds to be under the age of 15 years and not subject to the supervision or control of a responsible adult, and escort that child to the residence of a parent or carer or to a place of refuge. A place of refuge is defined so as not to include a police station, and a police officer may only remove a child where the officer considers that to take that action would reduce the likelihood of a crime being committed or of the child being exposed to some risk. The officer is required to notify the child's parents where possible. A child may not be detained at a place of refuge for a period exceeding 24 hours.

1425. Part 3 of the Act is being piloted in the Orange and Gosford districts of New South Wales. The pilots are intended to continue until independent evaluation of the model is undertaken. The evaluation was prescribed by the legislation to occur 12 months after the introduction of the legislation in December 1994.

1426. The legislation is silent on the provision of legal advice during the period that young people are held at a place of refuge. In practice, any young person who requested legal advice would be assisted by the workers at the place of refuge to obtain that advice. If the young person was required to be questioned by police in relation to any offence it would automatically be inappropriate for the young person to be held at the place of refuge and the questioning of the young person would be done in accordance with the provisions of the Children (Criminal Proceedings) Act 1987.

1427. Article 40 is complied with through the Children (Criminal Proceedings) Act 1987 and the Children's Court Act 1987. The Children (Criminal Proceedings) Act 1987 sets out the principles relating to the exercise of criminal jurisdiction in relation to children. It provides that children have rights and freedoms before the law equal to those enjoyed by adults, and in particular, a right to be heard and to participate in the processes that lead to a decision that affects them. The Act provides that it is desirable, wherever possible, to allow the education or employment of a child to proceed without interruption and to allow a child to reside in his or her own home. In accordance with this principle, the Act provides that criminal proceedings should not be commenced against a child otherwise than by way of summons or attendance notice unless the offence is a serious or indictable offence, or the child is likely to commit further crimes which indicate that the child should not be allowed to remain at liberty. Where a child is not released on bail the child shall be brought before the Children's Courts as soon as possible and in any case no later than the next day.

1428. In New South Wales, all children appearing in the Children's Court are entitled to free legal aid. Legal assistance is available from the Legal Aid Commission, the Aboriginal Legal Service, or from private legal practitioners.

1429. Privacy is maintained for juvenile offenders and witnesses in criminal proceedings according to the provisions of the Children (Criminal Proceedings) Act 1987. The Act prohibits the publication of the name or any identifying material relating to a child involved in any way in criminal proceedings.

1430. Article 40(3)(b) and (4) is complied with through Department of Juvenile Justice programs and police procedures, with support from other Government administrations including the Departments of Community Services, Health, School Education and Technical and Further Education. Options for diverting young people who have offended from committal to a juvenile detention centre include formal and informal police cautioning and pre-court offence resolution schemes called Community Youth Conferencing (CYC) schemes. The Conferences are convened by an independent person trained in mediation whose role is to arrive at a satisfactory outcome for all participants with a view to reparation for the offences. The scheme is currently being trialed in six locations, State wide.

1431. A number of sentencing options are available for juveniles as an alternative to committal to a detention centre. These options include community supervision, community service orders, fine default scheme, railway reparations scheme and attendance at a community youth centre for individual counselling or group work. A number of additional programs are under consideration, including an attendance centre program, a pilot of which has been conducted and is currently being evaluated, expansion of the role of community youth centres and re-establishment of an Aboriginal bail house, specialist alcohol and other drugs programs and post release support programs.

1432. The Department of Juvenile Justice seeks to access appropriate educational and vocational courses for young people on community-based court orders who are under the supervision of the Department. Education and vocational training is provided in each juvenile detention centre by vocational instructors employed by the Department of Juvenile Justice or through the Technical and Further Education Commission. Programs include fibreglassing, carpentry, metalwork, work on small motors, panel beating and spray painting, farming, fencing, printing, plumbing and outdoor maintenance.

1433. The Department of School Education operates Community Care Schools in each Centre to meet all standards of education, starting with basic literacy and numeracy skills and advancing to school certificate, higher school certificate and tertiary courses. All juveniles of compulsory school age are required to attend school, while those over that age can apply to participate in school programs.

1434. A New South Wales report, Kids in Justice (published in 1990 by the Youth Justice Coalition), found that children from different family backgrounds have markedly different chances in the juvenile justice system. The report states:

> Though Aboriginal juveniles make up only approximately two per cent of the population (10-18 years), they constitute 25 to 30 per cent of the inmates of New South Wales detention centres. They and other disadvantaged children can be seen to derive this status from a combination of history and culture, prejudice and ignorance, and lack of family resources (social and financial) to negotiate the juvenile justice system.

1435. The Kids in Justice report also found that police in different localities were influenced by the socio-economic background of the family of a suspected young offender in their decision to caution a child. The report further found that Aboriginal children were over-represented among those refused bail. It is clear from the report that systemic racism disadvantages Aboriginal children who enter the juvenile justice system. In response to the report, the Department of Juvenile Justice, through the recommendations contained in the 1994 New South Wales report entitled Breaking the Crime Cycle: New Directions for Juvenile Justice in New South Wales: White Paper, will commence the following projects: an Aboriginal bail hostel, Aboriginal counselling program, programs to be undertaken throughout supervision orders aimed at addressing causes of offending, funding for community groups to provide post release support and accommodation and ongoing consultation with Aboriginal communities regarding suitable programs.

Northern Territory

1436. In the Northern Territory a child under the age of 10 years is not criminally responsible for any act or omission. A child under the age of 14 years is not criminally responsible for an act or omission unless it is proved that at the time of doing the act or making the omission he or she had the capacity to know that he or she ought not do the act or make the omission.

1437. The Juvenile Justice Act 1983 empowers the Juvenile Court or the Supreme Court to give the juvenile such advice as he or she needs to obtain legal representation or to order legal representation be given to the juvenile, if the Court is of the opinion that such representation is necessary and has not been arranged.

1438. The Act provides that a child who is arrested and detained must be either brought before the court within seven days or released upon the expiration of such time. The Juvenile Court may decline jurisdiction over a juvenile charged with a crime. It provides that an offence, be it a crime or a simple offence, involving a juvenile is to be dealt with by the Juvenile Court and provides an option for a juvenile charged with a crime either to be tried summarily by the Court or to stand trial for the offence.

1439. The Juvenile Justice Act 1983 also deals with appeals and reconsideration of sentences imposed on children. There are two avenues of appeal in respect of decisions made affecting children. First, there is appeal to the Supreme Court, if the appeal is against a decision of the Juvenile Court, or to the Full Court of the Supreme Court, if the appeal is against a decision of single judge of the Supreme Court.

Secondly, the Juvenile Justice Act 1983 empowers the Juvenile Court to review or reconsider its own findings in relation to decisions which affect the child.

1440. The Juvenile Justice Act 1983 provides for proceedings to be undertaken in open court. However, the magistrate may order that the court be closed. The Act stipulates that a magistrate is empowered to restrict the publication or reports of the proceedings. Provision for vulnerable witnesses in the Evidence Act allows special procedures to be used when evidence is given by a child under the age of 16 years, including giving evidence by way of closed circuit television and having the child accompanied by a relative or friend for emotional support. The Judge or magistrate may also disallow any question put to the child that is confusing, misleading or phrased in inappropriate language.

1441. There are formal and informal measures in place in the juvenile justice system in the Northern Territory that ensure that detention of the juvenile is a last resort: measures that accord with Article 40 (3) (b) and (4).

1442. The Juvenile Justice Act 1983 sets out a number of dispositions that the Court must have explored before sentencing the offender to a period of detention:

- Police General Orders provide for formal cautions to be issued to first offenders with the offender's parent or guardian present; and
- Community Justice Panels.

1443. There have been recent community initiatives in the Northern Territory to develop Community Justice Panels that provide an alternative to detention and at times the entire court procedure. Some models proposed intervention prior to the court proceedings, and in one area, the panel becomes involved after conviction and prior to sentencing. Katherine is the only region that has a currently operating panel and they are exploring ways for the Aboriginal elders and victims to become more involved in the panel. Alice Springs has sent a proposal to the Police Commissioner recommending that a Community Justice Panel operate in conjunction with the police.

Queensland

1444. The Criminal Code defines the age of criminal responsibility. Children under the age of 10 years are not held to be criminally responsible for their actions and as such cannot be charged with criminal offences. In relation to children aged 10 to 14 years, it has to be proved that the child had the capacity to know that the activity in question was wrong at the time of the commission of the offence.

1445. The Children's Court Act 1992 provides for the constitution, jurisdiction and operation of the Children's Court including the establishment of the position of a Children's Court Judge.

1446. The rights under Article 40 are incorporated within the current criminal justice system in Queensland for adults and young people. The needs of children of non-English speaking background are recognised in the Juvenile Justice Act 1992 with the requirement that Police and Children's Courts make special efforts to ensure processes are understandable. The child has the right to the assistance of an interpreter. At present the Federal Telephone Interpreter Service is accessible from Children's Courts across the State. However, the need has been recognised to expand the provision of interpreters to attend Children's Court sittings when required. Children appearing in Court are entitled to legal aid, subject to certain guidelines.

1447. The right to privacy is safeguarded for young people who commit, or who are alleged to have committed, offences under the Juvenile Justice Act 1992 and the Children's Court Act 1992. Children's Courts are closed to the public except where a young person is being dealt with by a Children's Court Judge for a serious offence (eg murder). Only those persons whose presence is necessary for the judicial process will be present, including the young person's family. In recognition of the special needs of Aboriginal and Torres Strait Islander people, persons representing agencies whose primary concern is the provision of welfare services to Aboriginal and Torres Strait Islander children and families have the right to be present in court. The media is prohibited from publishing any information about a court proceeding that is likely to identify or lead to the identification of a young person.

1448. Under the Juvenile Justice Act 1992 young people have the new option of applying to a Children's Court Judge for a review of a sentencing decision of a Magistrate or justices constituting a Children's Court. The Act requires that such a review occur expeditiously and with as little formality as possible. This does not replace but enhances the right of appeal to the Court of Appeal which is time consuming and costly.

1449. The Juvenile Justice Act 1992 aims to make young offenders more accountable for their actions whilst diverting them from detention by providing courts with a wider range of non-custodial sentencing options and assisting young people released from detention to return to the community. The Act gives a statutory basis to police cautioning as a principle means of diverting children from formal prosecution. The Act also recognises the important role of Aboriginal and Torres Strait Islander families and communities in the reintegration of young people. Special provisions are made for the involvement of elders in the cautioning of young people.

1450. The Queensland Government has also adopted a comprehensive Juvenile Crime Strategy to address the escalating problem of juvenile crime by implementing programs aimed at preventing, containing, minimising and reducing juvenile crime. The purpose of the Juvenile Crime Strategy is to:

- reduce the levels of juvenile offending in targeted high crime rate areas and increase community participation in crime prevention activities;
- provide courts with credible and meaningful non-custodial penalties as alternatives to the use of detention; and
- ensure that young offenders experience consequences for their actions whilst being assisted to participate more positively in their community.

1451. New juvenile justice legislation implemented in 1993 expands the range of non-custodial sentencing options available to courts and facilitates the greater involvement of communities in corrections.

1452. The Departments of Education, Family Services and Police are also working together with selected schools in a program which it is hoped will stop young people offending, or, if they have offended, of going on to major crime. As the majority of children's criminal offending is both minor and transitory, diversion from the formal court system is desirable, having regard to the nature of the offence and the extent of criminal history.

South Australia

1453. The age of criminal liability in South Australia is 10 years under the Young Offenders Act 1993. Subject to certain guidelines children appearing in Court are entitled to legal aid.

1454. The new Young Offenders Act 1993 provides for due process for young offenders but also enables a much greater range of options to be exercised through the use of an informal and formal police cautioning system and the establishment of Family Group Conferences. Protection of the child's legal rights is built into both of these diversionary processes.

1455. The objects and policy of the new Act is enshrined in section 3(1) which states that:

> The object of this Act is to secure for youths who offend against the criminal law the care, correction and guidance necessary for their

development into responsible and useful members of the community and the proper realisation of their potential.

1456. The new Act places emphasis on reconciliation between the offender and the victim of the crime and involves the family of the offender taking part in the decisions made about young offenders in family conferences.

1457. The Young Offenders Act 1993 also upholds the use of detention as a last resort, to be used only when a non-custodial sentence would be inadequate. In relation to sentencing options, the Young Offenders Act 1993 retains traditional sentencing options such as fines, supervision orders and community service orders. Home detention is also a sentencing option. Community Justice Panels promote interaction, co-operation, communication and a better understanding between the Aboriginal community and the police, courts and the corrections system. This program aims to divert Aboriginal people from the criminal justice system and maximise the delivery of services to Aboriginal people who do come into contact with the system.

Tasmania

1458. Under current legislation the minimum age at which a child can be charged with an offence is seven years. From the 17th birthday onwards the law treats an offender as an adult. The present basis for intervention and correction where children or young persons are charged with, or found guilty of, an offence is contained within the provisions of the Child Welfare Act 1960. The Act establishes the Children's Court as having jurisdiction over persons under the age of 17, the procedures relating to arrest and charging of children who have committed offences and responsibility for the maintenance of children and wards of the State.

1459. The dispositions available to the Children's Court include the power to:

- admonish and discharge;
- impose a fine of up to $20, payable by the child;
- place a child under legal supervision for a period of up to three years; and
- declare a child to be a ward of the State.

1460. Children appearing before the Court have the right to legal representation and to be heard personally.

Victoria

1461. The Victorian criminal law provides that a person is innocent until proven guilty. Section 127 of the Children and Young Persons Act 1989 provides a minimum age of 10 years for criminal liability. A charge in respect of a child aged 10 to 16, other than for homicide and some other indictable offences, must be heard in the Criminal Division of the Children's Court. The Act provides that appeals are to be heard in an open court. For a child under 15 years of age the child's parent(s) or the Director-General may appear on the child's behalf. Children are allowed access to pre-sentence reports (section 56).

1462. The Children and Young Persons Act 1989 requires a child to be legally represented at criminal hearings of certain specified serious matters in the Children's Court. In practice, legal representation through the duty solicitor scheme is currently provided for most children and young people charged with an offence. The Victorian Government has provided funding to Fitzroy Legal Service to provide legal information to young people about their rights and responsibilities. Funding is also provided to Alphaline, a telephone advisory service for young people faced with legal problems.

1463. The Act provides the right to an interpreter where English is not sufficiently well understood.

1464. The police cautioning program and the juvenile mediation program are significant measures to reduce contact by young people with the criminal justice system and clearly comply with the Convention.

1465. The Victorian Police cautioning process provides for the cautioning of young people in preference to arrest or prosecution for offences. A caution may only be given if an offender admits to committing an offence. It may be issued without attending court, but only in the presence of a parent or guardian.

1466. The juvenile mediation program involves referral by police to Dispute Settlement Centres. This program was piloted from July 1992. It applies to young people under 17 years of age who have already received a first caution. It is to be limited to non-violent, minor property offences, such as wilful damage or vandalism, and minor assault. Restitution in the form of repair of the damage caused or a small amount of other work will be considered as an appropriate remedy as part of this mediation.

1467. The Victorian Government is conscious of the over-representation of Aboriginal youth in the juvenile justice system and is attempting to reduce the numbers of Aboriginal young people in Youth Training Centres and the juvenile justice system in general. During 1992 there was a 45 per cent reduction in the number of Aboriginal young people in Youth Training Centres. Funding has been provided for specific projects to work with young Aboriginals with the aim of raising their self-esteem, thereby reducing the likelihood of criminal activities. A number of Aboriginal agencies are funded to work with young offenders or young people at risk of offending.

1468. The Aboriginal Community Justice Panels promote interaction, co-operation, communication and a better understanding between the Aboriginal community and the police, courts and the corrections system. This program aims to divert Aboriginal people from the criminal justice system and maximise the delivery of services to Aboriginal people who do come into contact with the system.

1469. The Victorian Government has also developed specialised programs to meet the unique needs of Aboriginal offenders in the adult correctional system. These initiatives are targeted at all Aboriginals, regardless of age, but particular attention is given to providing young Aboriginal offenders with access to relevant cultural programs.

1470. A major initiative, which is currently being planned, will provide for Aboriginal ownership and control of correctional services for Aboriginal prisoners, offenders and their families. This project will have a strong focus on providing culturally relevant programs for Aboriginals in the correctional area.

1471. A number of community based corrections initiatives include the employment of an Aboriginal Program Development Officer to co-ordinate all Aboriginal programs. Wherever possible, Aboriginal offenders perform community work within the Aboriginal community, supervised by members of that community. Aboriginal offenders are dealt with in Aboriginal agencies where practicable. Aboriginal Culture Camps are held for young Aboriginal offenders.

Western Australia

1472. In Western Australia a child under the age of 10 years is not criminally responsible for any act or omission. A child under the age of 14 years is not criminally responsible for an act or omission unless it is proved that at the time of doing the act or making the omission he or she had the capacity to know that he or she ought not do the act or make the omission.

1473. In 1992 the Juvenile Crime (Serious and Repeat Offenders) Sentencing Act came into force. The legislation was the subject of extensive public debate. Particular concerns were raised in relation to its potential impact on Aboriginal juveniles. Two reports were subsequently prepared on the legislation by the Western Australian Legislative Council which called on the Western Australian Government to reconsider the impact of the legislation.

1474. The Young Offenders Act 1994 replaced the Juvenile Crime (Serious and Repeat Offenders) Act 1992 and this legislation is now the basis of juvenile offender management in Western Australia.

1475. The new Act is based on a policy of 'tough but fair' and utilises the concept that offenders should pass through a series of gateways to screen out the minor from the more serious offenders and ensure that the penalty is appropriate for the offence. The Act is intended to assist minor offenders to develop alternative socially responsible behaviour and ensure that repeat serious offenders are appropriately dealt with. The Act's focus takes account of parents, victims and the broader community's well being.

1476. The Act includes provisions for:

- cautioning of offenders by police;
- supervised release programs;
- more sentencing alternatives for juveniles;
- the establishment of juvenile justice teams which will provide a basis for mediation and reparation programs and family group conferences to encourage parental involvement; and
- the concept of conditional dismissal to discourage continued offending.

1477. The Act provides for a variation to a custodial sentence enabling the court to make a detention order to sentence young offenders to detention with a requirement that they undertake certain activities. The provision has been worded generally but is intended to provide the basis for placement of young offenders at a detention centre or any other alternative which may be developed in the future such as a mobile camp.

1478. In respect of repeat offenders, the court is required to give primary consideration to the protection of the community. A repeat offender is a person charged with a serious offence (defined in a schedule to the Act) who has served at least two previous periods of incarceration and there is a high probability of the person re-offending within a short period of release from detention. In these cases the Act provides for the imposition of a special order which provides for an additional fixed period of 18 months of which at least 12 months must be served in detention. The special order is cumulative with any detention sentence which the court may impose for the offence. The decision to impose a special order may be appealed.

1479. A discharge of the special order may be sought by the offender if the Attorney-General consents to the application being made. An application cannot be made:

- less than six months after the special order was imposed;
- earlier than three months before the special order begins to run; or
- less than three months after the special order was most recently reviewed.

1480. In reviewing a special order the sentencing court may consult or take advice from any person and inform itself in such manner as it thinks fit and is required to give the offender an opportunity to be heard, either personally or through a legal representative, and to present any evidence or material that the court thinks may be relevant.

1481. The right to privacy is respected by provisions of the Children's Court of Western Australia Act which contains provisions which prohibit the identification of juveniles involved in court proceedings. Children appearing in Court are generally entitled to legal aid.

1482. The Western Australian Government supports the recommendations of the Royal Commission into Aboriginal Deaths in Custody. The Royal Commission into Aboriginal Deaths in Custody is discussed in Part H (b)(ii), Special protection measures, Children in conflict with the law, Children deprived of their liberty, below. The Ministry of Justice has responsibility for juvenile justice. The Young Offenders Act 1994 ensures that the cultural background of an offender will be a relevant consideration in relation to sentencing. Diversion schemes and programs focus on the special needs of Aboriginal juveniles.

(ii) Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (Article 37 (b), (c) and (d))

Article 37 (b), (c) and (d)

States Parties shall ensure that:

(b) ***No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;***

(c) ***Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;***

(d) ***Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.***

1483. Australia has made a declaration to Article 37(c) which states:

> Australia accepts the general principles of Article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by Article 37 (c).

1484. The issue of segregation is discussed further by each State below.

Federal matters

Standard Guidelines for Corrections

1485. At the 1989 Conference of Correctional Administrators, the Standard Guidelines for Corrections in Australia were ratified. The Standard Guidelines are based on the UN Minimum Standards for the Treatment of Prisoners and apply to all prisoners irrespective of their age. The new set of guidelines supplements the Standard Minimum Rules in their application to Australian prisons and recognises a number of modern developments in sentencing and treatment of offenders. Accused persons awaiting trial are separated from convicted persons as far as practicable. Remandees are accorded different treatment from convicted persons. They are permitted private communication with family, friends and legal advisers as far as possible and are not required to work or wear prison dress.

1486. At the Ninth UN Congress on the Prevention of Crime and the Treatment of Offenders Australia supported the proposal for the organisation of an expert group to focus on elaboration of a program for promoting the effective implementation of UN standards and norms in juvenile justice.

Detention of juvenile offenders - general population

1487. Since 1977 the Australian Institute of Criminology has compiled statistics on the number of juveniles detained in corrective institutions. This enables monitoring of the national trends for juveniles in corrective institutions.

1488. The latest figures available show that as at March 1993 there were 746 persons under 20 years in detention. Table H1 shows the number of juveniles in corrective institutions by age for each State and Territory at 31 March 1993. In the 10 to 17 age group the national figure was 591, with the remaining 155 made up by the 18 + age group.

1489. Table H3 shows a breakdown of the detention status of juveniles in the age group 10 to 17 by for each State and Territory.

1490. The trend data shows that the rate of incarceration per 100,000 significantly decreased over the decade July 1981 to June 1992. For the 10 to 17 year age group the national rate was 107.15 for males and 23.61 for females on 30 June 1981. By 30 June 1992 the rate had decreased to 52.14 for males and 3.66 for females.

1491. In relation to young people detained in adult prisons, in the period from June 1989 to June 1992 the number of young people aged 18 and under held in adult prisons has declined. Table H4 shows a breakdown of persons under 20 years in juvenile institutions and adult prisons by jurisdiction and sex as at 1992. The most significant improvement has been in the under 18 age group which dropped from a national total of 94 in 1989 to 47 by 1992.

1492. The Institute now collects data that specifically identifies Aboriginal people and Torres Strait Islanders. The over representation of Aboriginal and Torres Strait Islander persons in juvenile correction institutions is discussed below.

Royal Commission into Aboriginal Deaths in Custody

1493. The Royal Commission into Aboriginal Deaths in Custody was established in 1987, jointly commissioned by the Federal, Northern Territory and State Governments. The Commission inquired into the deaths of 99 Aboriginal and Torres Strait Islander people in the custody of police, in prison or in youth detention institutions between 1 January 1980 and 31 May 1989.

1494. The 339 recommendations of the Report issued by the Commission address a wide range of responsibilities at Federal, State and Territory levels. Recommendation 62 states:

> that Governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles is so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for Government and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise.

1495. Other recommendations addressed issues such as drug and alcohol abuse, schooling, housing, relations with the police, custody and imprisonment.

1496. In responding to the Report, the Federal Government agreed that the Aboriginal and Torres Strait Islander Commission (ATSIC) would be responsible for compiling an annual report on the Federal implementation of the Report's recommendations. State and Territory Governments each produce an annual report on the implementation of the recommendations for which they are responsible.

1497. The Federal Government's Report, entitled Implementation of Commonwealth Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody: First Annual Report 1992-1993, was published in 1993. The Second

Annual Report: 1993-94 entitled Three Years On was released in early 1995. The Reports are distributed widely, including to all ATSIC Regional Councillors and Commissioners, over 2,000 Aboriginal and Torres Strait Islander organisations throughout Australia, and the public. The principal area of the Report of relevance to Aboriginal and Torres Strait Islander children is the administration of juvenile justice.

1498. In response to recommendation 62 the Federal Government undertook to implement a comprehensive National Aboriginal and Torres Strait Islander Youth Strategy to assist local communities to address youth issues. A key focus of the strategy is reducing the rate at which Aboriginal juveniles are involved in the criminal justice system. It will emphasise the involvement of parents, elders and other community bodies in planning and implementing local strategies.

1499. The development of the Aboriginal and Torres Strait Islander Youth Strategy has to some extent been overcome by the development of a National Youth Policy and the implementation of the Youth Social Justice Strategy. Both of these initiatives identified Aboriginal people and Torres Strait Islanders as a priority target.

1500. In 1991 ATSIC convened the Aboriginal and Torres Strait Islander Youth Working Group, a sub-committee of the National Youth Strategy Steering Committee. The Working Group was established to address the social justice issues related to Aboriginal and Torres Strait Islander young people on a cross departmental basis. The Working Group consists of representatives from a range of Federal Departments which have responsibilities in the areas of employment, education, training, health, housing community services, and social security. The Department of Prime Minister and Cabinet is also represented.

1501. In further response to recommendation 62, during 1993-94, Federal, State and Territory Strategy Coordination Committees were strengthened. The work of the Committees includes projects with State wide significance aimed at improving the coordination of service delivery to disadvantaged young people including Aboriginal and Torres Strait Islander children and in particular young offenders. Another initiative which has assisted young Aboriginal and Torres Strait Islanders are Youth Access Centres. Youth Access Centres assisted 11,764 young Aboriginal and Torres Strait Islanders during the December 1993 half year, compared to 9,300 for the same period in 1992. Of those assisted 41 per cent were young women.

1502. Other responses include ATSIC's Young Persons Sport and Recreation Program and Young People's Development Program. Under the Young Persons Sport and Recreation Program up to 38 Aboriginal Sport and Recreational Development

Officers will be employed by State or Territory Departments of Sport and Recreation to work in regional locations around Australia. The program is funded by State and Territory grants totalling $8.36 million over five years. Projects funded by the Young People's Development Program include $2.15 million to Aboriginal Hostels Limited to provide for immediate hostel accommodation, employment and training of community youth workers, cultural education provided by community elders, facilities to assist young people move from detention or institutions back into the community and involvement of young persons in community work projects. The total funding for the Young People's Development Program is $23 million over five years.

1503. The development of programs to assist young people under the age of 18 to access suitable education, training or work experience opportunities are discussed in Part G.

1504. During 1994 the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs conducted an inquiry into the implementation by Governments of the recommendations of the Royal Commission into Aboriginal Deaths in Custody. The Committee issued a Report on this inquiry in November 1994. The Report is currently under consideration by the Federal Government.

1505. The issue of Aboriginal and Torres Strait Islander deaths in custody is one of the issues addressed in the First and Second Reports of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Michael Dodson. His position was established in response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody. The office of the Aboriginal and Torres Strait Islander Social Justice Commissioner is located within the Human Rights and Equal Opportunity Commission and is responsible for an annual report to be tabled in Parliament by the Federal Attorney-General. The Government is currently considering its response to the Reports of the Aboriginal and Torres Strait Islander Justice Commissioner.

Aboriginal and Torres Strait Islander Juvenile Deaths in Custody

1506. Statistics on Aboriginal juvenile deaths in custody are compiled by the Australian Institute of Criminology. The Institute's National Deaths in Custody Monitoring and Research Unit has responsibility for conducting research into rates of imprisonment and demographic and sentencing trends of imprisonment of Aboriginal and Torres Strait Islander people. Statistics on young people covered by the Convention are included in the category 19 years and younger.

1507. During the Royal Commission investigation period from 1 January 1980 to 31 May 1988, 13 Aboriginal and Torres Strait Islander people under the age of 19 years of age died in custody. This is an average of 1.4 per annum.

1508. Further updated information on Aboriginal and Torres Strait Islander juvenile deaths in custody shows that there were 15 Aboriginal and Torres Strait Islander deaths reported for the period 31 May 1989 to 30 June 1994 as occurring in police custody, prison custody and juvenile detention or in a community setting. Of the 15 Aboriginal and Torres Strait Islander juvenile deaths, one was a female and 14 were male.

1509. Of the 15 Aboriginal and Torres Strait Islander juvenile deaths, eight either occurred in police cells, prison custody or a juvenile detention centre. Seven deaths occurred in a community setting, in the process of attempting to detain a person or whilst the person was attempting to escape from custody. (The Royal Commission expanded the definition of death in custody to include death in custody while in a community setting on 1 January 1990.)

1510. These 15 Aboriginal juvenile deaths in custody represent an average of three per annum, over twice the annual average of the Royal Commission period. However, this apparently large increase reflects a widening of the definition of a 'death in custody' which was one of the recommendations of the Royal Commission. Compared with the previous definition of a death in custody, juvenile deaths during the period rose to 1.6 per annum.

1511. In the 12 month period to 30 June 1994 there were nine deaths in custody of young people in the 15 to 19 year old age group. Three were Aboriginal juveniles, of whom two died in police custody and one in adult prison. Of the six non-Aboriginal people who died, two died in police custody, two in adult prison and two in juvenile detention.

1512. Two of the young people who died were 19 year olds; one died as a result of hanging in prison and another 19 year old died from a gunshot wound in police custody. Five of the young people who died were 18 years olds; two died as a result of hanging in prison; two died in police custody (one from natural causes and one from gunshot wounds); and one 18 year old died in juvenile justice custody as a result of hanging. Two of the nine were 16 years olds; one died as a result of gunshot wounds received in police custody and one died from hanging in juvenile justice custody.

1513. Most adult Aboriginal deaths in custody over this period were due to natural causes such as heart failure, however, in the case of young people the causes were either gunshot wounds or hanging. Only one young person died of natural causes.

Aboriginal and Torres Strait Islanders in juvenile detention

1514. As noted above, the Australian Institute of Criminology now collects data which identifies Aboriginal and Torres Strait Islander people in corrective institutions. No previous data had been collected consistently, so trend information is not yet available.

1515. Table H2 shows the number of Aboriginal and Torres Strait Islander persons in juvenile corrective institutions as at 31 March 1993 by age and State or Territory (except South Australia).

1516. Table H5 shows that Aboriginal and Torres Strait Islander juveniles are over represented in juvenile detention as much or more than adults. In New South Wales, Victoria, Queensland and Western Australia, Aboriginal and Torres Strait Islander juveniles are over represented in detention at around twice the rate of adults. Data for South Australia is not available. Over representation in the Northern Territory is much less evident in juvenile institutions than in prisons.

1517. The latest data available from Institute of Criminology (unpublished) shows that at June 1994 there were 90 indigenous juveniles in juvenile corrective institutions in New South Wales, 76 in Western Australia, 49 in Queensland, 22 in South Australia, five in Victoria, nine in the Northern Territory, three in Tasmania and none in the Australian Capital Territory. Their level of overrepresentation (compared with non-indigenous youth) was highest in Western Australia (a factor of 35), Queensland (23), South Australia (23), New South Wales (19), Victoria (13), Tasmania (11) and the Northern Territory (2.3).

1518. During August 1992 the Second National Police Custody Survey was conducted throughout Australia by the Institute of Criminology. The Survey is designed to obtain information on the extent and nature of police custody in Australia. It covered every occasion on which a person was lodged in a police cell anywhere in Australia during that month. The First Survey was conducted in August 1988 and provides the basis for the trend data. The Third Survey is due to be conducted in August 1995 and was not available at the time of writing.

1519. The Second National Police Custody Survey revealed that a total of 25,654 incidents of police custody occurred during August 1992. Aboriginal and Torres Strait

Islander peoples accounted for 7,209 or 29 per cent of the total figure although they make up only 1.5 per cent of the population and less than one per cent of the adult population (17 years and above). It is reasonable to expect that the pattern of detention of juveniles reflects the State by State difference of the Aboriginal population as a whole however the Survey data does not specifically identify this information.

1520. The people taken into custody were relatively young, the ages ranging from as young as 10 years, with 1,839 of the people taken into custody being under 18 years of age. Overall, Aboriginal and Torres Strait Islander people were in custody at a rate 26 times that of non-Aboriginal people.

1521. The pattern of Aboriginal custody rates show that Western Australia has the highest rate (7,007 per 100,000) followed by Northern Territory (253 per 100,000) and South Australia (178 per 100,000). The level of Aboriginal over-representation was particularly high in Western Australia, where Aboriginal people were placed in the cells at a rate over 52 times that of non-Aboriginal people.

1522. The Institute has stated that the most significant conclusion to be drawn from the 1988 and 1992 comparison is that, nationally, the total number of incidents of police custody decreased by 10.2 per cent. However, although there was an overall fall in the number of occasions of custody, the proportion of Aboriginal people involved increased by 0.7 per cent. The State by State differences show that Aboriginal people in detention increased in New South Wales by 13.3 per cent, in Western Australia by 5.7 per cent and in the Northern Territory by 4.8 per cent. By contrast the proportion of Aboriginal people taken into custody and held in cells fell in Queensland by 18.4 per cent, in South Australia by 10.6 per cent and in Victoria by 7.3 per cent.

1523. The Institute concluded that it is probable that the reduction in numbers of people being taken into custody and held in police lockups is a function of the greater use of bail and summonses and the greater use of cautions as alternatives to arrests. It should be noted that since the 1992 survey there have been a number of legislative changes eg the Young Offenders Act 1994 (Western Australia). A more up to date comparison and further data on State by State differences will be available after the 1995 Survey is analysed.

Principles to address the over representation of indigenous youth in the juvenile justice system

1524. The administration of the juvenile justice system is primarily the responsibility of the State and Territories Ministers for Health and Community Services. At the 25th Joint Health and Community Services Ministerial Council held in Perth on 21 March 1994 the Ministers endorsed a set of seven principles, set out in a paper entitled Principles to Address the Over-representation of Indigenous Youth in the Juvenile Justice System, designed to reduce the number of indigenous youth in detention. The principles were developed by the Juvenile Justice Sub-Committee in co-operation with ATSIC and include a detailed elaboration of desired outcomes, strategies and key performance indicators. The Standing Committee of Attorneys-General have also endorsed the principles set out in the paper.

1525. The principles state:

- That extensive consultation and negotiation occur with the Aboriginal and Torres Strait Islander community in the development, implementation, funding and monitoring of policies and programs that affect Aboriginal and Torres Strait Islander children, their families and communities within the juvenile justice system. Involvement by the Aboriginal and Islander community must be on the basis that they are fully informed of all issues and that expectations are clearly defined.

- That Aboriginal and Torres Strait Islander people are provided with appropriate training and resources to effectively participate in the development or delivery of policy or programs within the juvenile justice system.

- That Government legislation and policy emphasise the need to divert children from the criminal justice system unless circumstances indicate otherwise (eg nature of the offence, prior convictions).

- That children be detained in custody for an offence only as a last resort.

- That Aboriginal and Torres Strait Islander communities vary in type, nature and aspirations and that Government administrations should therefore be flexible in their dealings and negotiations with these communities.

- That culturally appropriate programs and supports be provided to Aboriginal and Torres Strait Islander children within the juvenile justice systems (particularly for those in detention or post-detention) to allow full integration back into their community and to minimise the possibility of re-offending.

- That Aboriginal and Torres Strait Islander people be employed at all levels of the juvenile justice system both within the community and Government sectors.

Youth Bail Accommodation Program

1526. This program is administered by the Aboriginal and Torres Strait Islander Commission and aims to reduce the rate at which young Aboriginals and Torres Strait Islanders are remanded in police custody or juvenile detention centres. It is expected that fewer young people will be given custodial sentences if the courts and police are provided with an alternative in the form of bail accommodation and supervision. It is envisaged that each State and Territory will be given the opportunity to develop at least one project, usually in the major population centre of the State or Territory. Total funding of $6.46 million over five years is intended to provide capital to establish new projects in the first three years, with recurrent funding in subsequent years.

1527. Examples of projects which have received funding include a new youth bail facility at Baa's Yard Outstation in the Pormpuraaw Community in North Queensland. The facility is supported by the Queensland Corrective Services Commission, which pays a sum of $200 per offender per week for accommodation and supervision of up to ten residents, and an additional $105 per week for supervision of additional offenders on Community Service Orders. In the Northern Territory funding was provided to run Aranda House in Alice Springs. This facility is run by the Central Australian Aboriginal and Islander Child Care Agency. This is a 16-bed facility and presently caters for youth on bail and youth at risk. All are encouraged to attend the secondary school next door to the facility, which has been established to cater for students experiencing problems. Older youths are encouraged to attend training at other venues, such as the Centre for Appropriate Technology, which offers courses in technical skills such as welding and motor maintenance.

Aboriginal Justice Advisory Committee

1528. The Royal Commission into Aboriginal Deaths in Custody recommended that each State and Territory establish an Aboriginal Justice Advisory Committee. The role of these committees is to provide Governments with independent advice on Aboriginal perceptions of criminal justice matters and on the implementation of the recommendations of the Royal Commission.

1529. Most States and Territories now either have established such committees or have committees that carry out similar roles. In recognition that there would be merit in greater coordination and communication between these State and Territory committees, the Federal Government announced in May 1995 the establishment of a National Aboriginal Justice Advisory Committee.

1530. The Committee will provide a mechanism for representatives of State and Territory Aboriginal Justice Advisory Committees to meet in a regular national forum. The National Committee would provide the State and Territory Attorneys-General with broad strategic advice on national Aboriginal criminal justice issues. It will provide an opportunity for State and Territory representatives to exchange information on current issues and implementation of the Royal Commission's recommendations. It is envisaged that the Committee will meet three times per year.

Detention of unlawful non-citizens

1531. This issue was discussed under Part H (a) (i), Special protection measures, Children in situations of emergency, Refugee children (Article 22), above.

Protection for juveniles in police custody - Federal Crimes Act 1914

1532. The Federal Crimes Act 1914 sets out court-supervised procedures and time limits that apply after a person under the age of 18 has been arrested and detained for a Federal offence. A two hour period is allowed for voluntary interviewing of the arrested young person which in appropriate circumstances may be extended by a magistrate for a maximum of a further eight hours. The investigation period is calculated to exclude time waiting for such things as medical attention, family, friends, lawyers and rest and recuperation. On or before the expiry of the relevant time period, the person must be brought before a magistrate or released on bail.

1533. The Act requires that where an investigating officer believes on reasonable grounds that a person suspected of involvement in a serious Federal offence, or under arrest in respect of any Federal offence, is under 18 years of age, he or she must not proceed with questioning until an interview friend is present and has first been allowed private communication with the person.

1534. The Act defines interview friend for the purposes of this section and sets out a preferred order in which the presence of an interview friend must be sought. In order of priority an interview friend may be first a parent, guardian or legal practitioner, secondly a relative or friend acceptable to the person, next (in the case of an Aboriginal person or Torres Strait Islander) an interview friend from a list maintained by the Attorney-General's Department or, finally, an independent person.

1535. The entire questioning process is to be recorded if possible. Evidence acquired during the investigation period after arrest is prima facie inadmissible unless it is tape recorded and the safeguard provisions have been complied with. Persons under arrest must be treated humanely and with dignity.

1536. Under the Crimes (Search Warrants and Powers of Arrest) Amendment Act 1994 there are limits on the circumstances under which:

- a young person can be strip searched;

- identification material can be taken from a young person; or
- an identification parade can be held for young suspects.

1537. The taking of blood and other forensic samples from juveniles is discussed under Part D (h), Civil rights and procedures, above.

1538. Access to legal assistance is discussed under Part H (e)(i) Special protection measures, Children in conflict with the law, The administration of juvenile justice, above.

State and Territory matters

Australian Capital Territory

Arrest

1539. Children may only be arrested without warrant in limited circumstances. Under section 349W of the Crimes Act 1900, which applies to children by virtue of the Children's Services Act 1986, a police officer may only arrest a person for an offence without a warrant if the officer believes on reasonable grounds that the person has committed or is committing an offence and that proceedings by summons rather than arrest would be ineffective in regard to specified criteria.

1540. The Children's Services Act 1986 provides that where a child is under restraint, the decision whether an officer will consent to prosecution must be made as soon as possible. If the decision is not to consent, the child is to be released forthwith.

1541. The Children's Services Act 1986 provides that children can be detained in a remand centre: because of their actual or apprehended violent behaviour; by reason of the seriousness of the offence; because of an escape or attempted escape by the child; or for other good cause.

Detention

1542. Children who are sentenced to imprisonment serve their sentence at Quamby Youth Centre, irrespective of the length of that sentence, providing they are convicted when a minor. The Court has discretion to move a young adult to an adult prison interstate, depending on individual circumstances.

Segregation

1543. It is possible that a child may be confined with adults where a child is committed to a State institution; or sentenced to imprisonment by the Supreme Court. This is because in both cases such a period of detention or imprisonment must be served in a State. A child may be committed to a State institution pursuant to section 47(1)(j) of the Children's Services Act 1986 and is subject to the State's laws in all respects as if the child had been committed by a court of the State.

New South Wales

Arrest

1544. The arrest, detention or imprisonment of juveniles is governed by the common law, the Children (Criminal Proceedings) Act 1987, the Children (Detention Centres) Act 1987, the Bail Act 1979, the Children (Parental Responsibilities) Act 1994, and the Children (Care and Protection) Act 1992.

1545. Police officers have at common law the same powers of arrest as private persons. A police officer may also arrest on reasonable suspicion of felony, whether a felony has or has not been committed. Arrest may occur without a warrant if the constable knows that the warrant has been issued, or that an indictment has been found against the person, or there is sufficient ground for reasonable suspicion. The Crimes Act 1902 broadens the common law powers of arrest so that any constable or private person may arrest without warrant for any offence under any Act.

1546. On arrest on reasonable suspicion, the person arrested must be informed of the substance of the charge unless the circumstances are such that he or she must know the nature of the offence or that he or she makes it impossible to supply the information, for example by resisting arrest (Christoe v Leachinsky [1947] AC 573). Williams v The Queen (1986) 60 ALJR 636, established that a person in police custody must be taken before a justice as soon as practicable, and the person may not be detained beyond this time merely to facilitate police investigations. Provisions relating to this are contained in the Crimes Act 1900 and in the Bail Act 1978.

Detention

1547. A primary goal of juvenile justice is the rehabilitation and eventual reintegration of young offenders into the general community through the acquisition of social, educational and vocational skills. The Department of Juvenile Justice is strongly committed to the policy of diversion and diversion is applied at each stage of the criminal justice process for juveniles. The success of community based diversionary strategies has contributed to reducing the proportion of young people in detention following final court appearances. This has occurred even though the actual number of young people going to court has increased. This has led to a situation where young people who are committed are increasingly older, more experienced offenders who commit more serious crimes. Department of Juvenile Justice programs to divert offenders from the criminal justice system are discussed under Part H (b)(i), Special protection measures, Children in conflict with the law, The administration of juvenile justice, above.

1548. The Children (Criminal Proceedings) Act 1987, provides that children should only be sentenced to a Juvenile Justice Centre when the Children's Court is satisfied that other sentencing alternatives are wholly inappropriate. Under the Act, and subject to the provisions of the Sentencing Act 1989, a court can order that a person be committed to a Juvenile Justice Centre for a period not exceeding two years.

1549. In addition, the Children's Court has a discretion to sentence a young person convicted of an indictable offence as an adult, pursuant to the Children (Criminal Proceedings) Act 1987. However, even if a prison sentence is imposed, in almost all cases the sentence is served or partially served in a children's detention centre by virtue of either section 10 of the Children (Detention Centre) Act 1987, which permits a transfer from prison to a children's detention centre, or by a court order pursuant to section 19 of the Children (Criminal Proceedings) Act 1987. The Children (Detention Centres) Act 1987 also makes provision for the transfer back to prison of any young person serving a sentence of imprisonment in a detention centre. Such action is generally a measure of last resort in the face of persistent and sustained major difficulties with the detainee's behaviour. It should be noted that no young offender has been transferred to prison (except to the prison hospital) since the opening of Kariong High Security Unit in 1991.

Segregation

1550. The Prisons Act 1952 provides that to the fullest extent practicable, convicted prisoners shall be separated from other prisoners, and different classes of convicted prisoners and different classes of other prisoners shall be separated. As a general rule adults and juveniles are separated, but there is no statutory provision which makes it mandatory to do so.

Standards of treatment

1551. The Department of Juvenile Justice administers the Children (Detention Centres) Act 1987. It is an offence under this Act for a detainee to be struck, cuffed, shaken or subjected to any other form of physical violence and an offence to be subjected to treatment of a kind that is cruel, inhuman or degrading. This Act and the Children (Detention Centres) Regulations 1988 provide for the care and protection of juvenile detainees. Regulations under the Children (Care and Protection) Act also ban corporal punishment of children under the Department of Community Services' care.

1552. Under the Children (Detention Centres) Regulations 1988, any letter or parcel sent to or by a detainee shall not be opened, read or inspected otherwise that by the person to whom the letter or parcel is addressed. A letter or parcel may only be opened and inspected by the superintendent or an authorised officer if the security, safety or good order of the detention centre is likely to be adversely affected. Part three of the regulation specifies the conditions for visits and communication with a detainee from relatives and friends, barristers and solicitors. The Superintendent may refuse to permit a visitor to a detention centre if the security, safety or good order of the detention centre or the well being of a detainee may be adversely affected.

1553. The aim of the Juvenile Justice Centres is to provide humane, safe residential environments ensuring appropriate levels of security and planned opportunities for the acquisition of knowledge, skills and attitudes to assist the successful community reintegration of the young offenders in custody. The objectives of the Juvenile Justice Centres include the following:

- to fulfil statutory obligations for the safe custody of young offenders by maintaining sound supervisory practices and encouraging positive staff-detainee interactions;
- to assess the health and ensure provision of necessary medical treatment, specialist counselling and assistance with basic material needs and post-release placement; and
- to provide staff with ongoing support, supervision, performance appraisal and training, to develop knowledge and skills relevant to their work.

1554. To assist in the treatment of these young offenders and to clarify the role and goals of detention centres, guidelines have been issued to ensure the provision of:

- well planned and thoroughly implemented casework management based on initial and ongoing assessment of individual needs;
- well planned and managed sport and recreational activities relevant to the backgrounds and needs of young offenders;
- purposeful, responsible and relevant work habits;

- well planned and structured educational and vocational experiences in centre schools and programs to raise levels of social competence;
- structured, controlled environments promoting accountability for behaviour with appropriate reward for exemplary effort and attitude; and
- active, vigilant supervision to ensure that absconding is prevented and that close scrutiny is given to the selection of detainees who are permitted to proceed on home leave.

1555. Appropriate education, basic pre-vocational and vocational education programs are provided for all students, including those who are post-school age, in juvenile detention centres aimed at upgrading their skills and promoting their successful reintegration into the community. This is achieved by:

- determining with the Department of School Education and the Detention Centre the most appropriate mix of educational programs;
- developing and running programs which meet the education/training needs of the young people, while taking into account the objectives, facilities and resources of the centre, including programs provided by the Department of School Education;
- providing, wherever possible, components of accredited programs to enable young people to gain credit for studies successfully completed, and to continue with training through the Technical and Further Education Commission on leaving the centre;
- developing and running where relevant, programs to meet the specific needs of Aboriginal young people in centres;
- monitoring the effectiveness of programs, and adapting them as necessary; and
- providing, as required, appropriate and accredited training for staff members of centres.

1556. Policy and program development, as well as in service activities are provided to teachers in Community Care Schools (including those in detention centres) to assist staff in their professional role of providing the most appropriate special education program to meet the individual needs of the students. Leave conditions for young offenders in detention centres have been reviewed so that graduated periods of leave are dependent upon the types of offences for which detainees are placed in custody.

1557. Further information on work performed by children in detention appears under Part H (c)(i), below.

Northern Territory

Arrest

1558. Statutory police powers of arrest are detailed in the Police Administration Act 1979. Section 121 of the Act provides for the issue of an arrest warrant by a Justice of the Peace pursuant to an application alleging that there are reasonable grounds for believing that a person has committed an offence. Section 124 of the Police Administration Act 1979 provides that where a police officer does not have the issued warrant in his or her possession he or she may arrest and take into custody any person he or she has reasonable cause to believe is a person for whose apprehension or committal a warrant has been issued. The police member has an obligation to produce to the person the warrant authorising the person's apprehension or committal as soon as is reasonably practicable. Section 123 of the Police Administration Act 1979 provides that a member of the Police Force may, without a warrant, arrest and take into custody any person where he or she believes that person has committed, is committing or is about to commit an offence.

1559. Section 25 of the Juvenile Justice Act 1983 provides limitations for the interview of juveniles who have committed or are suspected of the commission of an offence punishable by more than 12 months imprisonment. Section 33 provides that arrested juveniles are to be promptly brought before the court and in any event within seven days of arrest.

1560. Release on bail is provided for in the Bail Act 1982. The Bail Act 1982 establishes a presumption in favour of bail, which applies to all offences except murder and treason. The criteria to be considered in bail applications are set out in section 24 of the Act and include such considerations as the probability of the person's appearance or non-appearance in court and the protection and welfare of the community. Bail is granted unconditionally unless the police or court granting it are of the opinion that conditions should be imposed for the protection and welfare of the community and for the purpose of promoting effective law enforcement. Review of bail decisions is provided for in Part IV of the Bail Act 1982.

1561. In the Northern Territory, as in all jurisdictions, the writ of habeas corpus is available to challenge the lawfulness of the detention of a person. Persons who have been unlawfully arrested or detained have a right of action for damages at common law. Such action lies against the person occasioning the arrest or detention. There is no statutory right to compensation in the Northern Territory for unlawful arrest or detention. However, the Justices Act 1928 empowers the court to award costs to defendants in cases where the charges against them have been dismissed.

Detention of children

1562. The Juvenile Justice Act 1983 defines a juvenile as a person who has not attained 17 years of age. Section 53(10) of the Juvenile Justice Act 1983 provides that no juvenile under the age of 15 can be sentenced to a term of imprisonment. Juveniles who are 17 years old and over are treated as adults for sentencing purposes, and if deprived of their liberty, will be detained in adult prisons. Provision also exists in the Act to detain juveniles above the age of 15 years in adult prisons in certain circumstances.

1563. Juvenile offenders in general are detained either in Malak House (Darwin), the Wilderness Work Camp (Darwin) or Giles House (Alice Springs). A juvenile will not be placed in prison unless he or she has proven too difficult for detention centres. A juvenile cannot be placed in prison except by order of the court, and must be at least 15 years of age.

Segregation

1564. The Prisons (Correctional Services) Act 1980 requires convicted prisoners not yet sentenced and prisoners on remand to be kept separate and apart from prisoners under sentence. Juveniles are kept separate from other prisoners. Section 32(5) of the Juvenile Justice Act 1983 requires that when juveniles are travelling to court from their place of remand, they shall remain separate from adult offenders.

Standards of treatment

1565. Every person detained or arrested is inspected and it is noted whether or not the prisoner appears to be free of injury or distressed or in need of professional medical treatment. Action is taken to try to reduce the anxiety and disorientation that prisoners may have.

1566. The Officer in Charge of a police station is to establish and maintain a cell visitors scheme. The underlying principle of the scheme is to prevent prisoners experiencing a sense of despair, isolation or desertion leading to the deterioration of physical or mental health. A female prisoner will be searched only by a female person. Male prisoners are kept apart from female prisoners.

1567. The Prisons (Correctional Services) Act 1980 governs the treatment of prisoners and covers the following issues: personal possessions, official visitors, visiting medical officers, prison visits, communications, searches, employment of prisoners, food and exercise, and attendance at religious services. There are specific provisions in the Juvenile Justice Act that relate to the treatment of the juveniles whilst in detention. Section 64 of the Act states that the superintendent of a detention centre must promote programs that enhance the well being of the child, encourage the social development and improvement of the welfare of the child and ensure the safety of the child in detention. The superintendent must also supervise the health of the child. Leave can be granted of up to 12 hours at a time for the child to obtain education or vocation training, as well as participating in arrangements of a social or recreational nature.

1568. The regulation of punishment of offenders whilst in detention is described in detail at Part H: (b)(i); Northern Territory.

1569. The function of the official visitors is discussed under Part C (d) Respect for the views of the child.

Queensland

Arrest

1570. The Juvenile Justice Act 1992 permits police officers to arrest children only in certain circumstances and encourages proceedings against children to be dealt with in ways other than by arrest.

Detention

1571. The Penalties and Sentencing Act 1992 establishes the principle that custodial sentences should be used only as a last resort.

1572. Police General Instructions require children to be treated humanely and in a manner appropriate to their age and condition. A Commissioner's Instruction outlines the conditions relating to the detention and custody of children in police watch-houses. It requires that such detention be minimised and only be in accordance with the law.

1573. Procedures regarding the questioning of juveniles are governed by the Judges Rules relating to persons with a disability. A significant case, R v Cobbo, Cobbo, Coleman and Warner, and subsequent judicial decisions have clearly upheld the requirement for an appropriate independent person to be present during the questioning of juveniles for criminal offences.

1574. The Juvenile Justice Regulations 1993 and a Detention Centre Procedures Manual promote the protection of young people's rights and prohibit any degrading practices such as corporal punishment and the use of isolation as punishment. The Detention Centre Admission and Release Procedures were implemented in December 1991.

Segregation

1575. The separation of young people from adult offenders is a major principle of juvenile justice practice in Queensland. Offenders under the age of 17 years are not permitted to be sentenced to an adult prison. Current practice is that offenders of 17 years of age are not detained in adult centres unless there are exceptional circumstances. A watch-house policy has recently been developed and implemented in cooperation with the Queensland Police Service. This policy will ensure that young people are not held in watch-houses unless there are exceptional circumstances. One possible exception to this policy relates to the findings of the Royal Commission into Aboriginal Deaths in Custody. The Commission recommended that Aboriginal people not be placed in police cells in isolation. It may therefore be preferable for Aboriginal children to be detained in the company of an Aboriginal adult known to them. It is believed that the adult's presence in the cell will reduce the risk of self inflicted harm by the young person.

1576. Although all attempts are made to segregate persons on remand from sentenced prisoners, this is usually not possible. As noted above the current practice is for persons under 17 years of age not to be detained in adult centres unless there are exceptional circumstances. The Corrective Services Act 1988 requires that persons under 18 years of age are strictly segregated from older prisoners if they are held in adult correctional centres.

Standards of treatment

1577. A primary goal of detention centre programs is the successful reintegration of a young person into his or her community their release. In order to achieve this, it is vital that young people maintain regular contact with their family. Current policies and practices of detention centres actively promote this goal. However, regular contact may not be possible for some young people whose family live a considerable distance from the detention centre. Under these circumstances, communication by telephone or letter is particularly encouraged.

Appeals

1578. Young people are able to appeal against the decisions made by a magistrate through application to the Court of Criminal Appeal. However, the current process of appeal is very time consuming and a young person may be held in detention and released before the appeal is heard. Further, such appeals do not address the administrative nature of the decision to place a young person in custody. Under the Juvenile Justice Act 1992 young people have the option of applying to a Children's

Court Judge for a review of a sentencing decision of a magistrate or Justices constituting a Children's Court. The Act requires that such a review occur expeditiously and with as little formality as possible. This does not replace but enhances the right of appeal to the Court of Appeal which is time consuming and costly.

Aboriginal and Torres Strait Islanders

1579. In Queensland 48.2 per cent of children subject to Care and Control Orders (on 30 June 1990) were Aboriginal or Torres Strait Islander children. The Aboriginal and Torres Strait Islander population constitutes only 3.88 per cent of the child population in Queensland.

1580. In response to this situation, a number of initiatives have been taken:

- New juvenile justice legislation (the Juvenile Justice Act 1992) implemented in 1993 expands the range of non-custodial sentencing options available to court, and facilitates the greater involvement of communities in correction.

- The Juvenile Justice Act recognises the important role of Aboriginal and Torres Strait Islander families and communities in the reintegration of young people. Special provisions are also made for the involvement of elders in the cautioning of young people.

- A youth crime prevention strategy which encompasses Aboriginal and Torres Strait Islander youth in its target group has been implemented.

- The Department of Family Services and Aboriginal and Islander Affairs is in the process of introducing a computerised information system which will better identify Aboriginal and Torres Strait Islander youth in juvenile justice statistics and allow recidivism studies to be undertaken.

- The Department of Family Services and Aboriginal and Islander Affairs has conducted extensive consultation with Aboriginal and Torres Strait Islander communities throughout the State about the implementation of the legislation.

- A joint policy regarding the detention of children in watch-houses has been developed by the Queensland Police Service and the Department of Family Services and Aboriginal and Islander Affairs.

- Programs of the Aboriginal and Islander Division of Department of Family Services and Aboriginal and Islander Affairs aimed specifically at youth, emphasise the needs of homeless youth.

- The Division of Aboriginal and Islander Affairs also funds three drop-in centres for homeless youth in Brisbane. These aim to provide emergency accommodation, crisis counselling, treatment for alcohol abuse, vocation training and family reconciliation.

South Australia

Arrest

1581. The general power of arrest is found in the Summary Offences Act 1953 which provides that:

> A member of the police force, without any warrant other than this Act, at any hour of the day or night, may apprehend any person whom the member finds committing, or has reasonable cause to suspect of having committed, or being about to commit, an offence.

1582. Police Instructions require arresting officers to ensure that the offender is informed in clear words that he or she is being arrested and the reasons for the arrest.

1583. The Summary Offences Act 1953:

- allows one telephone call to a nominated relative or friend;
- provides for a solicitor, relative or friend to be present during any interrogation; and
- allows for an interpreter if English is not the person's native language.

1584. The Summary Offences Act 1953 allows a police officer to hold a person for up to four hours to complete an investigation of an offence punishable by two years imprisonment or more before delivering the person to a police station. With lesser offences, the person must be delivered forthwith to the nearest police station.

1585. The Summary Offences Act 1953 provides that where a person whose native language is not English is suspected of having committed an offence and the person is not reasonably fluent in English, the person is entitled to be assisted by an interpreter during any questioning conducted by an investigating officer. Where it appears that a person may be entitled to be assisted by an interpreter, an investigating officer shall not proceed with questioning until the person has been informed of the right to an interpreter.

1586. Where children are arrested, they are either released on police bail, by a justice or a Magistrate, or if no Magistrate is immediately available, they may make a telephone application to a Magistrate to be released on bail. The court may also release on bail a child appearing before it or remand the child in custody for a period not exceeding 28 days (except where a child has been committed to an adult court). Where a child is not granted bail under the Bail Act 1985, the child is usually detained by the Director-General with a person or in a place (other than a prison) approved by the Minister. Where a child is apprehended outside the prescribed area and it is not reasonably practicable to detain him or her in the manner provided above, the child may be detained:

- in a police station; or
- in a police station, watch-house or lock-up approved by the Minister.

1587. The Department of Family and Community Services staff are able to apprehend without warrant under a limited range of circumstances. These include:

- where a child who is on leave of absence from a training centre fails to return (section 63a(4) Children's Protection and Young Offenders Act 1979 (CPYO Act);
- apprehension of a child for breach of bond (section 61 CPYO Act);
- apprehension of a child upon the issue of a warrant to return the child to a training centre following breakdown of conditional release (section 64 CPYO Act);
- where a young offender escapes from custody during transfers to and from South Australia (section 65e CPYO Act); and
- unlawful absence from a training centre (section 75 Community Welfare Act 1973).

Detention

1588. The Young Offenders Act 1993 aims to divert children from the judicial process wherever possible. The majority of children sentenced to a period of detention will serve that period in a juvenile training institution. Instances of children being detained in an adult prison are rare and occur when the child's offence is of such gravity that the matter is referred to an adult court, which may sentence the child to a period of detention to be served in an adult prison instead of a juvenile facility. This may also occur when a child is transferred by order of the Court from a juvenile training facility to an adult prison because the child cannot be properly controlled in a juvenile training facility.

1589. A young offender can be sentenced to a period of detention of not less than two months and no more than three years in a training centre. Where a child is dealt with as an adult in an adult court, he or she can be sentenced to imprisonment but the court may order that the time up until the offender turns 18 is to be spent in a training centre. The Young Offenders Act 1994 includes a new detention option where a child may be ordered to serve a period of home detention, to be used as an alternative to a detention order served in custody.

Segregation

1590. The Young Offenders Act 1993 ensures that, where a child is detained in a police prison, police station, watch-house or lock-up, steps are taken to ensure that the child does not come into contact with any adult detained in the same place.

Standards of treatment

1591. Relatives of a detainee may visit the young offender subject to the provision of Part 3, Children (Detention Centres) Regulation, 1988. Under section 17(2), the superintendent, in the management of visits to the detainee shall, at all times, seek to encourage and facilitate visits to detainees by their relatives and friends.

1592. The Juvenile Justice Policy and Procedural Manual states that 'on arrival at a detention centre, a detainee will be assisted to make a telephone call to his (or her) family to inform them of his or her whereabouts and visiting arrangements etc at the detention centre'.

Tasmania

1593. Departmental Standing Orders and Administrative Instructions provide the necessary protections. There is only one correctional establishment in Tasmania for young people.

Arrest

1594. The arrest power is given by statute, usually in cases where a police officer finds a person offending against specified statutory provisions. In certain circumstances, by virtue of section 53(3) of the Police Offences Act 1935, members of the public may arrest without warrant. This power arises where a person is found offending where particular offences involve substantial injury to another person.

1595. Under the provisions of the Criminal Code, police officers and members of the public may arrest without warrant in specified circumstances. Police officers may arrest a person found committing any crime, and persons reasonably believed to have committed specified crimes.

1596. The Child Welfare Act 1960 defines a child as a person under the age of 17. The Act contains provisions designed to safeguard the interests of children who are arrested and provides for special procedures. Section 19 requires that where a child has been arrested, he or she must be brought before a children's court or some other summary court as soon as is practicable, or, in any case, within 24 hours. Where a child is not released on bail, he or she may be placed in the custody of an institution nominated by the Director of Child Welfare, usually a home or hostel approved under the Act.

1597. Detainees must be brought before a Justice as soon as practicable otherwise the detention becomes unlawful (Williams v R (1986) 66 ALR 385). The detainee is usually informed of the charge at the time of charging. The Justices Act 1959 requires that the offence be stated with enough particularity to inform the defendant of the nature of the offence and to allow him or her to mount a defence. Bail is usually granted unless the offender is unlikely to answer the bail or it is against the public interest.

1598. The Tasmanian Government has introduced into Parliament the Criminal Law (Detention and Interrogation) Bill 1995 which enables arrested persons to be detained for a reasonable time for the purposes of interrogation and investigation. The Bill includes the following safeguards in respect of an arrested person:

- the right to be informed of the right to silence;
- the right to have contact before questioning with a friend, relative or legal practitioner and the arrested person must be informed of that right; and
- where an arrested person requests to contact a friend, relative or legal practitioner, the right to be afforded an opportunity to make that contact.

1599. Remedies available for wrongful arrest and detention are available both administratively and through the courts. An aggrieved person may complain to the Police Department upon which an internal investigation may be launched. Civil remedies are also available in an action in tort for false imprisonment, assault and battery and other trespass to the person.

Segregation

1600. As prisoners are kept in custody for a limited period, facilities are often not adequate to provide segregation, nor are prisoners segregated when escorted from prison to court.

1601. The Police Regulations 1974 require certain classes of prisoner to be strictly segregated from others, particularly male from female and child from adult. Where facilities permit, prisoners charged with serious offences should be segregated from prisoners charged with less serious offences. Prison Regulations make separate provisions for the segregation of remand prisoners and convicted persons.

Standard of treatment in police custody

1602. Prisoners in police custody have the same rights to personal safety as ordinary citizens subject to the qualification that police officers may use reasonable force in preventing their escape and in searching them. Emphasis is placed on the prevention of injury to prisoners in both Police Regulations and Internal Instructions. Prisoners must be visited regularly and regard had to a number of factors such as the state of mind of the prisoner, suicidal tendencies etc. Such matters must be noted in the Watch House register and matters of particular concern must be communicated to supervising officers.

Victoria

Arrest

1603. The powers of arrest are contained in the Crimes Act 1958. The Crimes (Custody and Investigation) Act 1988, inserted a new sub-division into that Act dealing with investigatory procedures. The Act covers tape recordings of interviews of suspects by police, and the rights of suspects when they are in custody. The Children and Young Persons Act 1989 provides for the arrest and apprehension of children. For criminal proceedings arrest is covered by the Crimes Act 1958.

1604. The Victorian Police Operation Procedures require that if a person in custody is under 17 the police interview must not be carried out unless the parent/guardian or an independent person is present. Before the commencement of any questioning or investigation, the person in custody must be allowed to communicate privately with that person. If the parent/guardian cannot be contacted in a reasonable time or declines to attend, or the child suggests that he or she will not cooperate if the parent/guardian is present, the police may proceed with questioning after arranging for attendance by an independent person. The role of the third party is to ensure the child's evidence is accurately recorded, reduce any apprehension felt by the child and be able to present an independent account of the interview at any court proceeding.

1605. Under the Crimes (Fingerprint) Act 1994 police have the power to fingerprint a person who is 15 years of age or older, if they are suspected on reasonable grounds of committing an offence (or have been charged with, or have been summonsed to answer a charge, for an indictable or prescribed summary offence). If the person refuses to be fingerprinted, the police are able to use reasonable force to take a set of prints.

1606. Members are able to fingerprint children from 10 to under 15 years of age with the consent of the child and parent or guardian, or by order of the Children's Court if consent is refused. Children under 10 years cannot be fingerprinted.

1607. In the Criminal Division, a child must be released unconditionally, brought before the Children's Court, or brought before a bail justice within a reasonable time but not later than 24 hours after being taken into custody (Children and Young Persons Act 1989). Section 129 of that Act and the Bail Act 1977 cover the granting of bail. The Bail Act 1977 provides for a right of appeal from a refusal to grant bail.

1608. An interim accommodation order can provide for a variety of options similar to bail, including the release of the child into the custody of his or her parents pending the hearing, and the placement of the child with a suitable person, in a community service or in a secure welfare service. Where an interim accommodation order is made by a bail justice, the order only remains in force until the application is heard again by the court on the next working day, where the court must consider whether to continue or vary the order. There are limitations on when a child can be placed in a secure welfare service. In particular, the fact that a child does not have adequate accommodation is not of itself a sufficient reason for making such a placement. An appeal can be made to the Supreme Court against the making of an interim accommodation order. These provisions are found in the Children and Young Persons Act 1989.

Detention

1609. Standards are established for the detention of children placed in custody (Children and Young Persons Act 1989). The Children's Court must consider the hierarchy of sentences established under the Act, and not impose any sentence in the sentencing hierarchy unless it is inappropriate to impose a lower order sentence in the hierarchy.

1610. In addition, the Children's Court must take account of a number of matters before imposing a sentence. These matters include the need to maintain the child/family relationship and the desirability of allowing the education, training or employment of the child to continue without interruption.

1611. The intent of the sentencing hierarchy and the matters the court has to take into account is to promote the rehabilitation and reintegration of children in their community.

1612. Similarly, detention of children by police is used only as a last resort, and police must provide quarterly reports with details of when and where children were held in their custody. Strict conditions apply to any such detention, and a child can only be detained in a police cell in certain proscribed country areas, and then for no more than two working days. In some instances this may lead to some delay in gaining access to legal and other appropriate assistance. Children are allowed access to pre-sentence reports.

1613. In most cases child offenders are dealt with by the Children's Courts, and are sent to training centres if institutionalised. The Children's Courts sit separately from adult courts. Children accused of certain serious indictable offences may be tried in the same manner as adults and sentenced to terms of imprisonment.

1614. The Children's Court has the power to make a range of custodial and non-custodial sentencing orders. The custodial sentencing options include the power to detain a child in a youth training centre (if the child is aged between 15 and 17 years inclusive) or in a youth residential centre (if between the ages of 10 and 14 years). The Children's Court has no power to sentence a child to imprisonment with adults.

1615. The Children's Court only has jurisdiction in relation to a child who at the time of the alleged commission of the offence was under the age of 17 years but of or above the age of 10 years, provided the child is not 18 years or more at the time he or she was brought before the court.

1616. If a young person between the age of 17 and 18 commits an offence, the matter must be heard in the appropriate adult court. Such a person may receive a sentence of imprisonment and be held with adults. In Victoria the age of majority is 18 years, but the definition of child under the Children's Court legislation has remained at under 17 years of age. The full range of adult dispositions is available to courts sentencing a person 17 years of age and over to the adult correctional system. These dispositions range from community based orders, which enable offenders to remain in the community while undertaking supervised personal development programs and/or community work, to imprisonment. The Sentencing Act 1991 establishes the Intensive Correction Order, which broadens the range of adult community dispositions available to courts by providing an additional non-custodial sentencing option which is an alternative to prison. Offenders sentenced to a period of imprisonment to be served by way of an Intensive Correction Order, remain in the community, but are supervised for 12 hours each week (of which a minimum of eight hours is to be spent undertaking community work).

1617. In sentencing a child the Supreme and County Courts may exercise any of the powers which could be utilised by the Children's Court under the Children and Young Persons Act 1989. There is provision under the Act for a child sentenced to imprisonment to be transferred from prison to a Youth Training Centre.

Standards of treatment

1618. The Guiding Principles for Corrections contained in The Way Ahead (a document outlining corporate directions for the Victorian Office of Corrections in 1990-95), state that 'correctional programs should address the needs and problems of offenders.' In the case of offenders under 18 years of age being sentenced to the adult system, this includes addressing their special needs, some of which stem from their age. Practice is governed by the Office of Corrections' Young Adult Offenders Strategy Plan (1991). Young and vulnerable prisoners are identified by staff on reception, and their needs documented in an Individual Management Plan which is developed jointly by staff and the prisoner. The plan identifies both individual needs and appropriate programs offered within the prison system, and becomes the planning document for the prisoner's period of imprisonment.

1619. The Corrections Act 1986 provides all prisoners (including those under 18 years of age) with the right to maintain contact with family and friends through visits and correspondence. Prisoners are able to participate in a comprehensive visits program, which includes both contact and residential visits. The eligibility criteria for prisoner participation in both contact and residential visits program stipulates drug-free and infringement-free behaviour: non-contact visits of at least half an hour in each week are available to all prisoners. There is no limit to the amount of mail a prisoner may send, providing the prisoner has the funds required to cover the postage.

1620. All Youth Residential/Training Centres and secure welfare services currently provide an education program through the Department of School Education. In the context of major national education and training reforms, vocational education programs for 15 to 20 year olds in Youth Training Centres will be delivered on site and off site through the Technical and Further Education (TAFE) system from the start of 1993. The Department of School Education will continue to provide on site education for 10 to 14 year olds at Nunawading Youth Residential Centre and at secure welfare facilities. Students in these facilities will have access to education to year 12 level.

1621. A special education program is attached to one of the metropolitan Youth Supervision Units jointly auspiced by the Department of Health and Community

Services and the Department of School Education. This program aims to prevent young people at risk from entering central institutions and to retain them in the school system.

1622. The Corrections Act 1986 states that all prisoners have 'the right to take part in educational programs in the prison' (Section 47(o)). Accordingly, all prisons in Victoria have a prison education centre, and all prisoners have access to education and vocational training programs while in prison. These programs are provided at no cost to the prisoner. The prison education centres form part of the campus of the TAFE college which is responsible for the provision of education and training programs to that prison. Prisoners therefore have access to the same programs as the general community, and every effort is made, beginning at prisoner reception, to encourage prisoners to undertake relevant education and vocational programs in prison.

1623. Illiteracy and innumeracy are common worldwide issues in the area of prison education, and Victorian staff involved in this area participate in international forums and share information whenever possible. This practice of co-operation will continue.

1624. Recreational and cultural activities are promoted throughout the adult correctional system in Victoria. Each prison has an officer who is responsible for the development, organisation and implementation of recreational activities for all prisoners. Similarly, offenders serving community based orders are offered programs that encourage the positive use of leisure time.

1625. Many specific measures have been taken in relation to prison programs. Staff from the Aboriginal Legal Services and the Health Services are accessible to Aboriginal prisoners. Specialised reception procedures have been developed for Aboriginal prisoners and special prison accommodation is also available.

1626. An Aboriginal drug and alcohol worker, an Aboriginal welfare officer and an Aboriginal education officer are employed in the prison system. The education officer co-ordinates the delivery of specialised education/culture programs to Aboriginal prisoners. An employment strategy has been developed to encourage Aboriginals to work in prisons, and prison staff receive training in working with Aborigines in prison.

Youth Training Centres and remand arrangements

1627. The number of young people in institutions either on remand or under sentence of detention per 100,000 population is very low. This is particularly so in Victoria's only Youth Residential Centre (for young people 10 to 14 years).

1628. Young people (15 to 21 years) may be sentenced to detention in a Youth Training Centre by the Children's Courts or Magistrates Courts. Young people are so sentenced in a Magistrates Court where the court '...believes that there are reasonable prospects for the rehabilitation of the young offender or it believes that the young offender is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison.'

1629. When a child suspected of committing an offence has been arrested and is remanded by a bail justice to court under section 129 of the Children and Young Persons Act 1989, the child is normally placed in a Remand Centre. Section 130 of the Act provides that a child may be placed in alternative remand facilities as provided by regulations with respect to prescribed regions of the State. Under the Children and Young Persons Regulations 1991 in the regions of Mildura, Swan Hill, Horsham, Hamilton, Bendigo, Shepparton, Wangaratta, Tarralgon, Warrnambool and Bairnsdale, a child may be placed in a police cell or other suitable place for up to two working days. These areas are all outside a 75 to 90 kilometre radius from Melbourne.

1630. At present there are two remand centres in Victoria, and both are located in Melbourne. It was therefore thought appropriate to prescribe regions where children could be remanded in alternative facilities, where it would take more than one and a half travelling hours to take the child from the court to the relevant remand centre in Melbourne. As the child will normally be appearing before the local Children's Court on the next working day or within two working days, it may not be in the child's best interests to be transported long distances to take him or her to Melbourne and back again.

Segregation

1631. While in prison, offenders under the age of 18 years are not separated from adults. As there are so few people under 18 years of age in prison (on 16 March 1992 there were seven people under 18 years of age in prison), the Office of Corrections believes that it is not in the best interests of young offenders to have them separated and isolated. Rather, young offenders are carefully placed in an environment which offers safety, security and appropriate programs, and is in close proximity to family and community contacts.

1632. Under the Children and Young Persons Act 1989, the Director-General of Community Service Victoria must separate persons who are on remand from those who are serving a period of detention by accommodating them separately unless exceptional circumstances exist.

1633. Because of the extremely low numbers complete separation of young people on remand from those under sentence can result in virtual isolation for the former group as well as an inability to provide a wide range of programs and services for both groups. Thus, where the interests of the young people are best served, there is some mixing for program purposes. The two groups are segregated wherever possible and appropriate to their needs and best interests.

Western Australia

Arrest

1634. Powers of arrest are given to police under the Police Act 1892 and the Criminal Code. The Police Act 1892 gives a constable power to arrest without warrant all persons whom he or she has just cause to suspect of having committed or being about to commit any offence. The Criminal Code gives similar power. Police Routine Orders provide instructions that the person being arrested is to be told of the reasons for arrest. The Police Lockup Management Manual provides that a police officer who is an authorised police officer under the Bail Act 1982 must:

- consider each prisoner's case for bail as soon as practicable; and
- ensure that no person is detained unnecessarily.

1635. Under the Young Offenders Act 1994 the police have the power to release a young person on notice to attend court. A young person may be released on a notice to attend court even following arrest. This ensure that young people are not held in custody unnecessarily.

1636. Persons in custody are considered for bail under the provisions of the Bail Act 1982. If they remain in custody, they must be brought before a court as soon as practical. They are released on a date within seven days of the day on which they are arrested. Remandees will generally be held in a detention centre. However, the Ministry of Justice operates a bail facility which has a bed capacity of 12 and usually accommodates up to 10 children on a regular basis, leaving two beds for emergencies.

1637. Details of the charge contained in the complaint are put to the detainee when he or she appears in court. Other than the giving of reasons for the arrest there is no requirement in law or in internal instructions for the detainee to be told of the exact charge. As a matter of practice it is rare for a prisoner not to be told of the exact charge he or she is facing.

1638. Bail must be considered for all detainees. Bail may be refused if it is felt that witnesses may be interfered with, evidence disturbed, the detainee may re-offend, the detainee may not answer to bail or he or she needs to be kept in custody for his or her own protection.

1639. The child is entitled to apply for bail and under the Bail Act 1982 the child has a prima facie right to bail and may be released into the care of a responsible person who is a parent, relative, employer or other person(s) who is in a position to influence the conduct of the child and provide the child with support and direction.

Detention

1640. Under the Young Offenders Act 1994 a child who is arrested on a criminal charge may be held on remand in a detention centre pending the hearing of the charge. On conviction, the child may be sentenced to a term in a detention centre. A child over the age of 10 may be convicted of a criminal offence.

1641. If the child is over the age of 16, he or she may be sentenced to a period in an adult prison. If a young person reaches the age of 18 years while detained in a detention centre awaiting trial he or she may be transferred to an adult prison and will be treated as an adult prisoner on remand (section 21(1)).

1642. Under section 178 the court may direct that a young offender be removed from the detention centre to serve the remaining portion of his or her sentence in an adult prison. An order to remove a young offender to an adult prison may be made if the conduct of the offender constitutes a significant risk to the safety or welfare of the other detainees or staff or the detainee has reached the age of 18 and has a substantial period of detention still left to serve.

1643. There are limitations on the sentences which may be imposed on children by magistrates. Children may not be sentenced for a period of longer than six months in a detention centre or three months in a prison. A Judge of the Supreme, District or Children's Court may sentence children to longer periods.

1644. Section 666 of the Criminal Code, the Child Welfare Act 1947 and the Children's Court of Western Australia stress that as far as possible the juvenile offender should be dealt with in the juvenile justice system.

Segregation

1645. In Western Australia, only those juveniles are imprisoned in adult prisons who have been convicted of an extremely serious offence or who are not able to be managed or securely contained in a juvenile facility. The Young Offenders Act 1994 requires that a young person be detained in a facility which is suitable for a young person and at which the young person is not exposed to contact with any adult detained at the facility. However, a young person who is 16 years or older may be held in an adult prison although he or she is not to share living quarters with an adult prisoner. A young offender may also be detained in particular detention centres known as a work camp at which adults are also detained.

1646. The numbers of juveniles received into Western Australian prisons are small and there are no separate facilities to contain them. Juveniles held in adult prisons are subject to special management to ensure that, as far as possible, they are not exploited by contact with adult prisoners. Due to the small number of juvenile prisoners, it is not possible to segregate them entirely from adult prisoners, because, in many cases, it would amount to keeping them in solitary confinement.

1647. While some of the offences are serious and necessitate juveniles being placed in adult prisons for the protection of the community, 50 per cent of the juveniles were dealt with at regional courts. Due to the remote location of some of these juvenile offenders and lack of juvenile detention facilities in these areas, these juveniles are sometimes placed in adult prisons. Removing them to metropolitan juvenile facilities would result in their isolation from their families who would be unable to visit them in Perth.

Standards of treatment

1648. The management of young offenders in juvenile detention centres is governed by the Young Offenders Regulations 1994, the Child Welfare (Detention Centres) Regulations and the Director General's Rules 1990 specify the conditions under which personal searches may be made, letters opened and visits conducted. See Part D (h) Civil Rights and Freedoms, the right to not be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

1649. The Prisons Act 1981 applies where juveniles are detained in an adult prison. The Prisons Act provides that prisoners are able to participate in educational courses conducted by the Department of Technical and Further Education courses while in prison. Wherever appropriate, relevant community organisations are used to provide education, particularly in regional areas. Education programs offered include: literacy and numeracy skills, vocational training and tertiary courses offered externally. Education programs are provided for juveniles as required. Culturally appropriate programs are provided for Aboriginal prisoners.

1650. The Prisons Act 1981 also protects the right of prisoners to practise their religion. The Act requires that on admission, a prisoner is to be given an opportunity to have his or her religion or religious denomination recorded. Subject to restrictions imposed by the Director for the security, good order and management of the prison and the prisoners, a prisoner may practise the rites or attend services of his or her religion or religious denomination within the prison; and receive religious guidance and visits for that purpose from a bona fide priest, chaplain, minister, religious adviser or other responsible member of that religion or religious denomination approved by the Director.

(iii) The sentencing of juveniles, in particular the prohibition of capital punishment and life imprisonment (Article 37) (a)

Article 37 (a)

States Parties shall ensure that:

(a) ***No child shall be subjected to torture or other cruel, inhuman or degrading treatment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.***

Abolition of the death penalty

1651. The death penalty has been abolished in Australia by the following legislation:

Federal, Australian Capital Territory and Northern Territory:	Death Penalty: Abolition Act 1973;
Queensland:	Criminal Code Amendment Act 1922;
New South Wales:	Crimes (Amendment) Act 1955, Crimes (Death Penalty Abolition) Amendment Act 1985 and Miscellaneous Acts (Death Penalty Abolition) Amendment Act 1985;

Tasmania:	Criminal Code Act 1968;
Victoria:	Crimes (Capital Offences) Act 1975;
South Australia:	Statutes Amendment (Capital Punishment Abolition) Act 1976;
Western Australia:	Acts Amendment (Abolition of Capital Punishment) Act 1984.

1652. The last execution occurred in 1967 when Ronald Ryan was hanged in Victoria following his conviction for murdering a prison officer while escaping from custody.

Imprisonment

Federal Matters

1653. Under Federal criminal law it is possible for a young person under the age of 18 to be sentenced to life imprisonment for the commission of a serious federal offence, such as conspiracy to import drugs or murder of a protected person (such as a diplomat).

1654. However, section 20C of the Federal Crimes Act 1914 provides that when a child is charged with a Federal offence the court may apply State and Territory law relating to the trial and sentencing of young people. The main purpose of section 20C is to enable a court to take advantage of more innovative and appropriate sentencing options that may be available under State and Territory law in respect of a young offenders.

1655. In the event that the court elects to sentence the offender to the maximum penalty of life imprisonment under the Federal Crimes Act 1914 the court can give a non-parole period but must gives reasons if a non-parole period is not to be given. In practice the court always fixes a non-parole period which effectively limits the sentence to a particular period.

State and Territory Matters

Australian Capital Territory

1656. The maximum period to which the Children's Court may order a child to be detained in an Australian Capital Territory institution is two years. When the Children's Court has found a child guilty of an indictable offence it may commit the child to the Supreme Court for sentence. The Supreme Court may sentence a child as it would an adult, and thus can sentence up to life imprisonment for a relevant offence. However, there is some possibility of release from a life sentence. Pursuant to the Royal Prerogative of Mercy, the Governor-General may give an absolute or conditional pardon or remit sentences. Further, Australian Capital Territory prisoners may be released on licence as provided by the Federal Removal of Prisoners (Territories) Act 1923 as applied by the Removal of Prisoners (Australian Capital Territory) Act 1962.

1657. A variety of options are open to the Children's Court in sentencing children under section 47(1) of the Children's Services Act 1986. When a child has been convicted of an offence by the Court, the court may make a range of orders, including:

- an order reprimanding the child;
- a conditional discharge order. The child must comply with certain conditions (eg give an undertaking to be of good behaviour, or agree to attend school), and no conviction is recorded against the child;
- an order imposing the penalty provided by law for the offence;
- an order that the child pay compensation for any loss suffered as a result of the offence, provided this does not exceed $1,000. No child will be fined more than he or she is capable of paying;
- a probation order. The child must report to a supervisor regularly, possibly fortnightly at the beginning of the order, with the level of supervision tapering off at the end of the order;
- an attendance centre order. This order attempts to address the causes of the offending behaviour as well as imposing a sanction on the child. A child must spend a set number of hours (up to 104 hours) in the supervision of the Juvenile Justice Section of the Housing and Community Services Bureau, which may include community service work and personal development courses (such as drug and alcohol education), as ordered by the Court; or
- a residential order.

New South Wales

1658. While life imprisonment may be imposed on children under the Crimes (Life Sentences) Amendment Act 1989, a possibility of release remains, as the Royal Prerogative of Mercy has been preserved. Under section 442 of the Crimes Act 1900 the Court has a discretion to impose a lesser sentence where an offender is liable to a life or fixed term of imprisonment.

1659. The arrest, detention or imprisonment of juveniles in New South Wales is governed by the common law, the Children (Criminal Proceedings) Act 1987, the

Children (Detention Centres) Act 1987, and the Bail Act 1978. Section 6 of the Children (Criminal Proceedings) Act 1987 identifies the principles which a court should have regard to in exercising criminal jurisdiction with respect to children. Two of the principles are particularly relevant to Article 37, namely:

- that it is desirable, wherever possible, to allow the education or employment of a child to proceed without interruption; and
- that it is desirable, wherever possible, to allow a child to reside in his or her own home.

1660. The Crimes (Life Sentences) Amendment Act 1990, the Sentencing (Life Sentences) Amendment Act 1990, and the Prisons (Serious Offenders Review Board) Amendment Act 1990 provide for the abolition of indeterminate sentences of life imprisonment. The Crimes (Life Sentences) Amendment Act 1990 provides that any sentence of life imprisonment is to be for the offender's life. There are now only two offences which have maximum penalties of life imprisonment, ie murder and trafficking of large commercial quantities of drugs under the Drug Misuse and Trafficking Act 1985. All other life imprisonment penalties were replaced with a 25 years maximum sentence.

1661. The Sentencing (Life Sentences) Amendment Act 1990 provides for the re-determination of existing life sentences. Any person who has served eight years of an existing life sentence may apply to the Supreme Court for a re-determination of the sentence into a minimum and additional term. The Supreme Court, at its discretion, may decline to do this, or it may order an additional term to be the term of the person's life.

1662. Recent initiatives in respect of rehabilitation include the Criminal Records Act 1991, proclaimed on 31 May 1991, which provides for the convictions of a person to be spent if the person completes a period of crime-free behaviour (being 10 years for adults and three years for children). The scheme does not apply to certain convictions including those for which a prison sentence of more than six months has been imposed, and convictions for sexual offences.

Sentencing Act 1989

1663. Recent changes in respect of sentencing have been made by the Sentencing Act 1989 which provides for a bottom up method of sentencing, replacing the previous top down system. In place of the old head sentence with a period specified before the person could be released to probation or parole under the Probation and Parole Act 1983, the Sentencing Act provides that first the court should assess the minium period to be served in custody and then impose an additional term which may be served, subject to the decision of the Offenders Review Board. A court may also impose a fixed term of imprisonment instead of a minimum period and an additional term because of the nature of the offence, the antecedents of the accused or for any other reason the court thinks fit. All sentences of six months or less are fixed term. Remissions are abolished by the Sentencing Act 1989. The minimum period specified by the court is the minimum period that the person will serve in custody. Release at the end of minimum period is determined by the Offender Review Board. There is no presumption in favour of release on parole, as there was under the Probation and Parole Act 1983.

Northern Territory

1664. The Juvenile Justice Act 1983 grants the Juvenile Court an extensive range of options when sentencing children. These are:

- to discharge the juvenile without penalty;
- to adjourn the matter for a period not exceeding six months and, if during that period the juvenile does not commit a further offence, to discharge the juvenile without penalty;
- to fine the juvenile not more than the maximum penalty that may be imposed under the relevant law in relation to the offence or $500, whichever is the lesser amount;
- to order the juvenile to be of good behaviour for a period not exceeding two years, and on such security, as it thinks fit, and subject to one or more of the conditions:
    - that the juvenile reside with the person or at the place specified in the order;
    - that the juvenile obey the reasonable directions of a person specified in the order under subparagraph (i);
    - that the juvenile refrain from the activities, or from associating with the persons, specified in the order; or
    - any other condition the Court thinks fit;
- to order that the juvenile perform unpaid community work;
- to place the juvenile under probation for a maximum of two years subject to certain conditions;
- to order that the juvenile be detained at a detention centre or imprisoned for a period not exceeding the maximum period that may be imposed under the relevant law in relation to the offence or 12 months, whichever is the lesser;
- to order the juvenile to participate in a project or program provided or approved by the Minister as specified in the order; or
- make such other order under the relevant law that it could make if the juvenile were an adult convicted of that offence.

1665. The Juvenile Court can refer matters to the Supreme Court for hearing where the juvenile has been charged with an indictable offence. In referring the matter to the Supreme Court there are several matters that the Court must have regard to, including the nature and seriousness of the offence, the age and maturity of the offender and the suitability of the penalties available to the Court.

1666. Once the Supreme Court has jurisdiction it can, in addition to penalties specified in the Juvenile Justice Act, sentence the offender to a period of detention for which such an offence if committed by an adult is punishable.

1667. The Northern Territory has mandatory life imprisonment for murder however, if the murder is committed by a juvenile, the Supreme Court has the discretion to sentence the juvenile to a shorter period of imprisonment.

Queensland

1668. There is no imprisonment in Queensland 'without possibility of release.' Under the Penalties and Sentencing Act 1992 imprisonment is a penalty of last resort. An offender sentenced to life imprisonment is, unless otherwise indicated by the sentencing court, eligible to apply for parole after serving 13 years.

1669. The Juvenile Justice Act 1992 removes the option of indeterminate sentencing that was available under the Children's Services Act 1965. The Juvenile Justice Act 1992 also provides for a maximum period for which young people can be placed in detention.

South Australia

1670. The Children's Court is not empowered to sentence a child to imprisonment. However, if a matter is dealt with by an adult court, the adult court may sentence a child as an adult and sentence that child to a period of imprisonment, including life imprisonment. A child found guilty of murder must be sentenced to imprisonment for life.

1671. Where a child is ordered to serve a sentence of life imprisonment in an adult prison, the child will be subject to the usual parole and release conditions under the Correctional Services Act 1982. Where a child is ordered to serve life imprisonment in a juvenile training centre, parole and other conditions of the Correctional Services Act 1982 do not apply. Instead a child may be released on licence through application to the Training Centre Review Board, but this process is not automatic.

Tasmania

1672. Mandatory life imprisonment for the crime of murder has been abolished.

1673. The Child Welfare Act 1960 places restrictions on the entry of convictions against children and restricts the imprisonment of children under 16 years by children's courts. A children's court may not impose a fine greater than $20 on a child under 14 years, nor impose a probation order in respect of a child under 15 years.

Victoria

1674. In Victoria, if a sentence of life imprisonment is given and no minimum term is set by the Supreme Court, the offender may apply to the Court to fix a minimum term. Standards are established for the detention of children placed in custody (Children and Young Persons Act 1989, sections 251 and 252).

1675. Sentencing law was reviewed by the Victorian Sentencing Committee, chaired by Sir John Starke QC in 1988. The Committee recommended that the purpose of a sentencing system should be to prevent crimes and promote respect for the law by:

- providing for sentences that are intended to effectively deter the persons being sentenced and all other person from the commission of the same or similar types of offences;
- providing sentences that facilitate the rehabilitation of offenders;
- ensuring that offenders are only punished to the extent justified by:
  - the nature and gravity of the offences committed;
  - culpability and degree of responsibility for the offences; and
  - the presence of aggravating or mitigating factors; and
- by ensuring that appropriate use is made of the State's correctional facilities.

1676. The sentencing inquiry led to the introduction and passage of the Sentencing Act 1991. This Act contains, for the first time, sentencing guidelines which outline the factors that the courts must have regard to in sentencing (sections 5 and 6). A court must not impose a sentence which is more severe than that which is necessary to achieve its purpose (section 5(3)) and a court is not to impose a sentence that involves confinement of the offender unless this is the only way to achieve the purposes for which the sentence is imposed (section 5(4)). The Act expands the situations in which a court can exercise its discretion to not record a conviction, and improves the range of non-custodial sentencing options available. The aim of the Act is to provide courts with flexibility in sentencing options so that the most appropriate sentence is imposed.

1677. The Sentencing (Amendment) Act 1993 introduced indefinite sentences for persons convicted of serious offences. Young persons were expressly excluded from the indefinite sentences provisions.

1678. The Corrections (Remissions) Act 1991 operates in conjunction with the Sentencing Act. This Act provides for the abolition of remission and re-release permits. It ensures that convicted offenders serve the minimum term of imprisonment set by the court.

Western Australia

1679. The principle that imprisonment is a sanction of the last resort is now embodied in the Criminal Code and the Young Offenders Act 1994. Section 17A of the Criminal Code now provides that a Court shall not impose a sentence of imprisonment on an offender unless it is of the opinion that the seriousness of the offence is such that only imprisonment can be justified or the protection of the community requires it. Section 7 of the Young Offenders Act 1994 confirms that a young person should only be detained in custody for an offence as a last resort and for as short a time as possible. Section 120 of the Act prohibits the court from imposing a custodial sentence unless it is satisfied that there is no other appropriate way for it to dispose of the matter. When a custodial sentence is imposed the Court is required to record in writing the reasons why it considers a custodial sentence necessary. Table H6 shows sentences handed down to juveniles in Western Australia from January 1991 to January 1992.

1680. The Young Offenders Act 1994 allows the Court to consider a wide variety of sentencing options including: no punishment; fines; youth community based orders; and intensive youth supervision orders. Table H7 shows a range of outcomes for the period 1 July 1993 to 30 June 1994.

1681. Section 7 of the Young Offenders Act 1994 sets down general principles to be observed in performing the functions under the Act. When sentencing a young offender the Court is required to apply the principles set out in the section and the general principles of juvenile justice. The principles imply but do not expressly require that the best interests of the child are paramount. These principles cover a wide range of considerations including that a young person should be treated fairly, not more severely than if he or she were an adult; and in a way that encourages the young person to accept responsibility for his or her conduct. Punishment of a young person for an offence should be designed so as to give the offender an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways.

1682. The principles expressly recognise that the community must be protected from illegal behaviour and that victims of offences should be given the opportunity to participate in the process of dealing with the offenders to the extent that the law provides for them to do so.

1683. In addition the section puts an emphasis on parental responsibility and states that responsible adults should be encouraged to fulfil their responsibility for the care and supervision of young persons. Further that a young person who commits an offence is to be dealt with in a way that: strengthens the family and family group of the young person; fosters the ability of families and family groups to develop their own means of dealing with offending by their young persons; and recognises the right of the young person to belong to a family.

1684. The sentencing of young offenders who repeatedly commit serious offences is dealt with separately in the Act. Part 7, Division 9 of the Act provides for an additional sentence to be imposed on a young offender with a history of recidivism. A special order imposing this penalty may be made in respect of a young offender who:

- has been found guilty of an offence for which a custodial sentence has been imposed;
- after being released from custody in relation to that offence committed a second offence for which a custodial offence has been imposed; and
- after being released from custody in relation to that offence committed a third offence for which a custodial offence is to be imposed (section 124).

1685. In such cases, if the Western Australian Director of Public Prosecutions submits that a special order should be made, and the court is satisfied that there is a high probability that the offender would commit further offences for which custodial offence could be imposed, the court is to impose an additional sentence of 18 months imprisonment or detention (sections 14 and 126). An application for the discharge of the order may be made up to every three months, once six months has elapsed since making the order, but may only be made with the consent of the WA Attorney-General (section 129). In these cases the Court is required to give primary consideration to the protection of the community ahead of other principles (section 125).

1686. A young person sentenced to a term of detention of nine months or more may be detained in a particular kind of detention centre, commonly referred to as a work camp, for a period of four months.

1687. To set a minimum period of detention before release the Court must calculate the period according to a formula in section 121 of the Act. Where no minimum period is set or, the person is sentenced for a term of 12 months or less, a minimum of 50 per cent of the term must be served in detention. In the case of a special order which imposes an additional sentence for repeat offenders the period is fixed and no minimum period applies. In the case of detention in a work camp the minimum four months period may be adjusted by the court.

1688. In 1988 the parole system applying to persons detained in adult prisons was changed. Under the new system the courts pronounce only a maximum sentence of imprisonment for each offence. The courts no longer direct that a minimum term be served before a prisoner is eligible for parole but now determine whether or not an offender is eligible for parole. Section 37A of the Offenders Community Corrections Act 1963 (as amended) sets out a formula. The application of the formula determines the eligibility date for parole, which is ordinarily after service of one-third of the maximum sentence.

1689. Other initiatives aimed at reducing the rate of imprisonment were introduced between 1989 and 1991 and include Work Release Orders, Work and Development Orders and Home Detention Orders.

1690. A new Sentencing Bill has recently been tabled in Parliament and in addition to consolidating existing sentencing laws and practices it also provides the courts with a greater range of sentencing options which can be tailored to meet the needs of individual offenders.

1691. The conduct of officers in Western Australian juvenile detention centres is regulated by Director General's Rules which set standards for appropriate behaviour including the principles that officers will discharge their duties 'having due regard to the detainee's physical and mental status, human rights and natural justice'. Officers also have responsibilities to report any alleged physical and/or emotional abuse of a detainee of which they become aware.

(c) Children in situations of exploitation, including physical and psychological recovery and social reintegration (Article 39)

(i) Economic exploitation, including child labour (Article 32)

Article 32

1. *States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.*

2. *States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present Article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:*

(a) *Provide for a minimum age or minimum ages for admission to employment;*

(b) *Provide for appropriate regulation of the hours and conditions of employment;*

(c) *Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article.*

Federal matters

International Labour Organisation Conventions

1692. Australia has ratified a number of International Labour Organisation (ILO) Conventions concerning minimum age. They are:

- No 7 Minimum Age (Sea), 1920;
- No 10 Minimum Age (Agriculture), 1921;
- No 15 Minimum Age (Trimmer and Stokers), 1921;
- No 58 Minimum Age (Sea) Revised, 1936;
- No 112 Minimum Age (Fishermen), 1959; and
- No 123 Minimum Age (Underground Work), 1965.

1693. ILO Convention 138, the Minimum Age Convention 1973 which came into force on 19 June 1976 has not been ratified by Australia. An Interdepartmental Government Task Force established to review 75 unratified ILO Conventions has recommended that it be regarded as not suitable for ratification. This is because of the prescriptive approach adopted by the Convention which causes serious compliance problems in Australia. These compliance problems include the requirement for legislation in areas that fall within the jurisdiction of the States and in areas in which Australia has tended to deal with the issues through other measures such as compulsory school attendance. However, further consideration is being given to this matter because of the importance of the subject matter.

Legislation dealing with employment conditions

1694. In Australia, wages and working conditions of persons below adult age are regulated by a combination of legislation and awards. Legislation (essentially State legislation) deals with occupational health and safety matters and with minimum school leaving ages, restrictions on child employment and employment of children in particular work. Industrial tribunals deal with wage rates and the fixing of the proportion of junior to adult employees.

1695. In settling disputes and making industrial awards the Australian Industrial Relations Commission must have proper regard to the interests of the parties immediately concerned and of the Australian community as a whole.

1696. Consequently, when making an award which may cover a large number of young people, the Commission should consider their interests. The Commission should also have regard to the Australian community's interest in protecting young persons.

1697. The Federal Government has also established a tripartite working group on labour standards. It consists of high level representatives of the Federal Government, unions and industry and will examine ways and means of strengthening the commitment to core labour standards in the Asia Pacific region. In particular, it will address the question of exploitative child labour, including possible ways of dealing with the importation of goods produced by exploitative child labour, a voluntary code of conduct for Australian companies operating overseas, and the scope for supporting consumer driven practices such as product labelling with regard to exploitative child labour.

State and Territory matters

Australian Capital Territory

1698. The Children's Services Act 1986 regulates the employment of children under the age of 15. The Act prohibits the employment of a child in hazardous employment without the consent of the Director of Welfare. Conditions are outlined for children employed for light work (eg errands, distributing newspapers, baby-sitting etc). A person may only employ a child in certain occupations, which are listed, or in a family business. The employment must be for less than 10 hours per week, and must not have a detrimental effect on the child's schooling. The Act imposes a penalty where activities may be dangerous to the health and safety of the child.

New South Wales

1699. The employment of children under the age of 15 years is regulated by the Department of Community Services under Part 4 of the Children (Care and Protection) Act 1987. There is a regulation (which includes a Code of Practice) under that Part which, together with the Act itself, give effect to the protection of the child from abuse and exploitation.

1700. The employment of children aged 16 to 18 years is regulated by the Department of Industrial Relations, Employment, Training and Further Education, and the relevant legislation is consistent with the terms of Article 32. Division 7 Part III of the Factories, Shops and Industries Act 1962 contains provisions safeguarding:

- the employment of children and young persons in factories (section 49);
- the employment of young persons in connection with machinery (section 51);
- the employment of young persons at night (section 54); and
- the weights that can be lifted or carried by young persons in factories (section 36).

1701. Section 18 of the Children (Detention Centres) Act 1987 concerns the work to be performed by detainees. The superintendent of a detention centre may require a detainee to carry out any work or activity that:

- is reasonable having regard to the detainee's physical and intellectual capacity;
- is not hazardous to the detainee's health or safety; or
- avoids conflict with the detainee's religious belief or educational or other training program.

Northern Territory

1702. The Education Act 1979 provides that no child between the age of six and 15 years is to be employed during school hours or at any other time which would make the child unfit or unable to attend school or receive instruction provided. The Community Welfare Act 1983 provides that children under 15 years of age will not be employed between 10.00 pm and 6.00 am and prohibits employment of children in dangerous activities without the consent of the Minister. While there is no inconsistency between the Convention and Territory legislation, there is no legislation which currently provides for employment or regulation of hours and conditions of employment or a minimum age for employment.

Queensland

1703. The relevant Acts do not specify minimum ages for employment, with the exception of the Workplace Health and Safety Act 1989. The Workplace Health and Safety Act 1989 provides that an employer shall not permit any male under the age of 18 years or any female to operate at a workplace where lead processing is used. The Health Act 1937 prohibits a person who has not attained the age of 18 years from obtaining a pest control operator's licence or preparing pesticides for use by a pest controller. The Act also prohibits a person under the age of 17 years from mixing or loading agricultural chemicals intended for the use in aerial or ground application.

1704. The Education (General Provisions) Act 1989 indirectly addresses the issue of the legal minimum age for part-time and full-time employment by providing that a parent shall not employ or cause to be employed his or her child during school hours unless special dispensation has been granted. Education is mandatory until 15 years and therefore labour restrictions do not apply after that age.

1705. The Children's Services Act 1965 prohibits any female child under the age of 17 years from engaging in street trading. However, boys over the age of 12 years may engage in street trading between the hours of 6.00 am and 10.00 pm, under certain conditions. Children are prohibited from engaging in street trading during school hours.

1706. The Children's Services Act also makes it an offence for adults to employ children in the following occupations:

- relating to the procurement of children for employment in the performing arts, (for money);

- children who are under school leaving age are prohibited from working in racing stables, or as a jockey. This work is permitted if betting was not permitted in relation to the employment and if the proceeds were to go to schools, churches, or charity;

- under this section of the Act, it is also an offence to employ children in any dangerous or indecent performances; and

- any such children engaged in the cinematographic industry, or who are working as a model or engaged in public entertainment, who are under school leaving age require a permit issued by the Director-General of the Department of Family Services and Aboriginal and Islander Affairs. (In practice this delegation rests with the Regional Manager of the area in which the child resides.)

1707. The Director-General or Police have powers to search and enter premises in relation to section 115 of the Children's Services Act 1965.

1708. The Industrial Relations Act 1990 provides that the Queensland Industrial Commission may fix working hours and the proportion of young employees to adult employees and progressive wage rates for employees under the age of 21 years. In making an award that fixes rates of wages, the Commission is to take into consideration the age and experience of such persons under the age of 21 years. Various awards make other specific provisions for the employment of young people. Award provisions may cover such topics as machinery operation, hours of work, and general conditions of employment.

1709. The Vocation, Education, Training and Employment Act 1991 provides for the relevant Industrial Relations Commission (State or Federal) to determine the minimum wages to be paid to an apprentice or trainee. The Act also makes provision for certain other classes of persons under the age of 21 years employed in non apprenticeable occupations to receive a set minimum wage. The Act also prohibits employment of persons under the age of 21 years on trade work in declared apprenticeable occupations unless that person is an apprentice or has completed an apprenticeship in that trade.

1710. Section 78 of the Education Act provides that a child of compulsory school age may not be employed during the hours at which he or she is required to attend school or during any part of a day of night in any labour or occupation that is such as to render the child unfit to attend school or to obtain the proper benefit from the instruction provided for him or her.

Tasmania

1711. The Child Welfare Act 1960 governs the public performance of children under 14 years, trading in a public place under the age of 11 years and trading in a public place under the age of 14 years after 9.00 pm.

Victoria

1712. In Victoria the Community Services Act 1970 prohibits the employment of a child under 15 years of age without a child employment permit issued by the Department of Labour.

1713. The Victorian Department of Labour recently established the Youth Industrial Unit in response to the recommendations contained in the Young Workers Task Force Final Report, Youth Industrial Rights, and the findings of the Job Watch Inc research, The School and Work Report. Job Watch Inc is an independent community legal centre which monitors and investigates exploitation in employment and training. Both reports indicated that large numbers of young people and children were working, and that this component of the workforce was apparently ignorant of its industrial rights and industrial services. The Unit specifically deals with the issues of employment practices concerning children and young people (under 18 years of age) and provides an ongoing monitoring and policy development function.

1714. The Victorian Government has been directly involved in the production of educational materials and publications specifically for young people, informing them of their industrial rights. Award Services staff are actively involved in the Victorian Industrial Relations Speakers Service, a service aimed at providing Victorian post-primary schools with access to expert industrial relations practitioners. The Government provides funding for Job Watch Inc (see above) which is active in exposing exploitative practices and educating the community about rights and responsibilities across a range of employment issues, including child and youth employment.

Western Australia

1715. In Western Australia a child may engage in part-time employment at any age subject to any restrictions relating to the particular occupation.

1716. The Child Welfare Act 1947 limits the part-time employment of children in street trading to those aged 12 and above and to daylight and out of school hours, licences the employment of children under 15 in entertainment and advertising and imposes penalties for employing children for indecent or pornographic purposes.

1717. The Criminal Code, Videotapes Classification and Control Act and Indecent Publications and Articles Act also contain provisions imposing penalties on adults who exploit children for pornographic or other indecent purposes.

(ii) Drug abuse (Article 33)

Article 33

> ***States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.***

Federal matters

1718. At the Federal level, drug abuse reduction programs and other initiatives are undertaken by the Department of Human Services and Health. The Drug Dependence Branch of the Department is responsible for the co-ordination, development, implementation and evaluation of a National Drug Strategic Plan and the provision of secretariat services for a Ministerial Council on Drug Strategy, a National Drug Strategy Committee and a National Drug Crime Prevention Fund. During 1993-94 significant progress was made towards finalising the National Drug Abuse Strategic Plan 1993-97.

1719. A National Drug Strategy household survey was conducted in 1993. The survey sought information on drug related behaviour, knowledge and attitudes among 3,500 persons aged 14 years and over in all States and Territories. The Survey revealed, amongst other things, that since a survey conducted in 1991, the patterns of alcohol consumption had remained fairly consistent but the proportion of people consuming low alcohol beer had increased by five per cent to 17 per cent.

1720. In the area of research and education, core funding is provided to the National Drug and Alcohol Research Centre in Sydney and the National Centre for Research into the Prevention of Drug Abuse in Perth. A range of pilot education and prevention initiatives have been targeted at law enforcement issues and in relation to substance abuse amongst Aboriginal and Torres Strait Islander people.

1721. In addition, the Aboriginal and Torres Strait Islander Commission funds the Substance Abuse Program. In 1993-94 over $15 million was distributed under this program, involving 189 projects endorsed through the regional council process. New initiatives included the establishment of rehabilitation centres, bail centres, night patrols, family support groups and sobering-up centres; the employment of Aboriginal alcohol and other drug counsellors; mobile assistance patrols; the upgrading of service premises; and the purchase of land and project equipment. The program operates within a policy context that seeks to bring together community aspirations and national alcohol and other drug priorities.

1722. The Department launched a national multimedia education campaign on amphetamines, Speed Catches Up with You, in June 1993 and a booster campaign in early 1994. The campaign elements used cinema, television, radio, billboard and youth magazines to target current and potential users about the dangers of amphetamine use. A teacher's education kit based on the amphetamine campaign materials was developed and distributed to schools.

1723. The Federal Government has taken a number of initiatives to reduce tobacco consumption. It is a first priority of Health Australia, an $18 million, three-year program announced in the 1995 Budget, to reduce the impact of smoking on young people. Another initiative is the Tobacco Advertising Prohibition Act 1992 which entered into force in 1993. The Act establishes a national prohibition on tobacco advertising at sporting and cultural events. It extends the existing bans on broadcasting and print media and complements the action of those States and Territories which have introduced their own restrictions on tobacco promotion. Removing tobacco advertising is primarily a prevention activity intended to reduce the number of children taking up smoking. Although advertising may not directly cause children to smoke, it reinforces other influences such as peer and social pressures which cause children to smoke. Tobacco advertisements glamorise smoking, making it seem like a desirable activity. This initiative is an attempt to minimise the impact of tobacco advertising on the public by breaking the nexus between tobacco messages and glamorous sporting events and other positive portrayals. This is especially important in the Australian context where sport is a vital part of our culture and where elite sports people are idolised, particularly by the young.

1724. Australia is a Party to the three United Nations Drug Conventions, namely: the Single Convention on Narcotic Drugs 1961; the Psychotropic Substances Convention; and the 1988 Convention Against Illicit Trade in Narcotic Drugs and Psychotropic Substances. Under these Conventions Australia contributes to global, regional and bilateral efforts to promote health, welfare and the social fabric of the international community by minimising the harmful effects of drugs in ways that are consistent with national drug policies.

State and Territory matters

Australian Capital Territory

1725. The use (legal or otherwise) of drugs in the Australian Capital Territory is regulated by the Drugs of Dependence Act 1989. This Act provides more severe penalties for the supply of drugs of dependence to children than for supply to adults. The Australian Capital Territory actively participates in the National Campaign Against Drug Abuse with a strong focus on prevention and education of youth. Alcohol and drug youth programs focus on a range of activities, from preventive and educative activities to rehabilitation and intervention.

New South Wales

1726. In New South Wales, the National Drug Strategic Plan is implemented through drug education in schools which provides students with information and skills to enable them to make informed decisions about drugs. Resource materials have been distributed to schools throughout New South Wales which include ideas for ways to teach the topic and a manual of drug-related policies. Department of School Education regional consultants have been specifically trained to support the program.

Northern Territory

1727. The use of drugs in the Northern Territory is regulated by the Misuse of Drugs Act 1990. Section 5 prohibits the supply of scheduled drugs to children. The penalties involved for the supply of scheduled drugs to a child are substantially higher than penalties set out for supply to an adult. A child is defined under the Act as being a person under the age of 17 years. Section 37 provides for a number of aggravating circumstances which will increase the penalty for which the offender is liable. Such circumstances include committing an offence under the Act at a playground, public swimming pool, school or youth centre.

Queensland

1728. In Queensland the Police Service enforces the Drugs Misuse Act 1986 which provides for a specific offence of trafficking in drugs in the vicinity of educational institutions. The Service's State Drug Task Force role investigates serious drug matters such as trafficking and production of illicit substances. There is an extensive drug education program in Queensland schools and smoking is prohibited within school buildings and grounds.

South Australia

1729. In South Australia the protective prohibitions on the use of narcotic and psychotropic drugs are contained in the Controlled Substances Act 1984. In addition the sale of tobacco and alcohol to persons under the age of 18 is prohibited. Additional penalties apply to persons found selling drugs in the vicinity of schools.

Tasmania

1730. In Tasmania the protective prohibitions on the use of narcotic drugs and psychotropic substances are contained in the Poisons Act 1991 and apply generally.

Victoria

1731. The Victorian Drug Strategy Plan (1993-98) provides a clear outline of action to reduce drug related harm in Victoria over the next five years. It provides a framework to guide policy development, program planning, resource allocation, monitoring and evaluation.

1732. Young People and Drugs - a Strategy Framework develops a strategic response to youth issues in relation to tobacco, alcohol and other drugs. It provides a plan within which all interested parties relating to young people and drugs can work, both together and independently, towards common goals relating to addressing young people and their drug use.

1733. Drug Education is an integral part of the curriculum standards framework key learning of health and physical education. The Drug Education Strategic Plan 1994-99 goal is to enhance and sustain drug education in Victorian schools in order to contribute to the minimisation of the harm associated with drug use by young people.

Western Australia

1734. In Western Australia the Health Promotions Services Branch has in place an Illicit Drugs Education Program. The objectives of this program are: to provide information about the effects of illicit drugs; to promote alternatives, where appropriate, to taking drugs; and to encourage community and professional action to minimise the harm which can result from drug abuse.

(iii) Sexual exploitation and sexual abuse (Article 34)

Article 34

> ***States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national bilateral and multilateral measures to prevent:***

(a) ***The inducement or coercion of a child to engage in any unlawful sexual activity;***

(b) ***The exploitative use of children in prostitution or other unlawful sexual practices;***

(c) ***The exploitative use of children in pornographic performances and materials.***

Federal matters

The Crimes (Child Sex Tourism) Amendment Act 1994

1735. The 1992 Report by the Special Rapporteur of the Program for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, Mr Vitit Muntarbhorn considered the need to extend national jurisdiction to cover acts of Australian child sex tourists abroad. Following discussion at the Standing Committee of Attorneys-General at Darwin on 24 June 1993, the Federal Government has enacted legislation consistent with the Special Rapporteur's recommendations which:

- creates a criminal offence dealing with sexual relations between adults and children applying to Australian nationals or residents overseas; and
- creates criminal offences dealing with associated paedophile activities within Australia such as the organisation and promotion of child sex tourism.

1736. The Crimes (Child Sex Tourism) Amendment Act 1994 came into effect on 5 July 1994. It inserted a new part into the Crimes Act 1914 to deal with the activities of: Australian paedophiles who travel overseas for the sexual exploitation of child prostitutes; those responsible for organising overseas tours for the purpose of engaging in sexual relations or activities with minors; and those who otherwise profit from child sexual exploitation. The Act makes such activities the subject of criminal offences punishable in Australia.

1737. The Act makes special arrangements for the protection of children giving evidence. If the attendance of the child witness at the court to give the evidence would cause the child psychological harm or unreasonable distress or subject the child to intimidation or distress, the court can direct that the child's evidence be given by video link. The court may also order payment of expenses incurred in connection with giving evidence in this manner.

1738. The Federal Government is also seeking to develop closer law enforcement cooperation between Australian agencies and their counterparts in selected countries to combat child sex tourism involving Australians. The Federal Government has secured the agreement of State and Territory Police Ministers that police forces will cooperate fully with Federal authorities in the investigation and prosecution of paedophile activities. The Federal Government has obligations under sections 70BA and 70BB of the Family Law Act 1975 which provide that the Family Court of Australia must notify a child welfare authority where it receives notice of an allegation that a child to whom the proceedings relate has been abused or is at risk of being abused. The Federal Government is also fostering the development of uniform State and Territory legislation to deal with the sexual abuse of children within Australia and associated activities such as the production, possession and sale of child pornography. The States and Territories have also agreed to consider what State and Territory legislation might be required to complement the Federal Government's legislation.

State and Territory matters

1739. The issue of the age at which a child may give sexual consent is covered in Part B (f): Definition of the child in laws and regulations, Sexual consent, above.

Australian Capital Territory

1740. Family Services of the Housing and Community Services Bureau has statutory responsibility for investigation of notification of the sexual abuse of children and providing services to children in need of care.

1741. Sexual exploitation of children is covered under the Crimes Act 1900, which imposes penalties of prison terms up to 10 years for employment of a young person to engage in an act of a sexual nature or for pornographic purposes. The section prohibiting the employment of a young person for pornographic purposes implements a recommendation of the Australian Law Reform Commission in a Report on Censorship Procedure. Possession of pornographic material depicting a child is an offence, with a penalty of up to five years imprisonment.

1742. In December 1991 a new offence was added to the Crimes Act 1900, that of maintaining a sexual relationship with a child. This section is intended to aid in successfully making out a prosecution for continuing sexual abuse of a person under the age of 16 years. It is no longer essential that the young person provide exact details of the dates and circumstances of sexual intercourse or act of indecency, only that such incidents occurred on at least three occasions.

1743. Under the Publications Control Act 1989 it is an offence to sell or hire R and X rated films and publications to minors. It is also an offence to assist or encourage a minor to obtain such material.

New South Wales

1744. Measures to protect children from sexual abuse are contained in the Children (Care and Protection) Act 1987 and are administered by the Department of Community Services. The Department has a statutory responsibility to investigate notifications of child sexual assault. The Act provides for mandatory notification of child sexual assault by teachers and school counsellors. The Act also provides for the mandatory notification of child abuse, including child sexual assault, by medical practitioners. Relevant criminal offences concerning Article 34 include sections of the Crimes Act 1900, dealing with sexual offences, many applying exclusively to child victims. Other sections provide offences for promoting or engaging in acts of child prostitution, obtaining benefit from child prostitution, using premises for child prostitution, or using children for pornographic purposes.

1745. A police officer or officer of the Department of Community Services may remove a child from premises, without a warrant, if he or she suspects on reasonable grounds that the child is in need of care and is or has recently been on premises where prostitution or child prostitution takes place or where persons are employed for pornographic purposes (Children (Care and Protection) Act 1987).

1746. If a child is charged with a prostitution offence, that child will appear before a special Children's Court. If a child has been involved in prostitution, the care and control of the child may be placed before the Children's Court for a magistrate to determine. In New South Wales, all children appearing in the Children's Court are entitled to free legal aid. Parents, guardians or people with a special interest in the welfare of the child are also eligible for legal aid in the care proceedings. Eligibility is subject to a means test.

1747. With regard to pornography, the child is not charged with any offence. If the alleged perpetrator of the pornography is charged with a criminal offence, the child is not a party to the proceedings and would therefore have no need to be legally represented. If, as a result of the pornography, a child suffers psychological trauma, the child is eligible for legal aid to apply to the Victim's Compensation Tribunal for compensation.

1748. Thirty-four sexual assault services operate throughout New South Wales under the auspices of the Department of Health. Staff from these services provide community education in high schools which deals with prevention and available sexual assault services. Training is provided for sexual assault services staff to sensitise them to the needs of young people. Most sexual assault services hold groups for young people who have been abused. All New South Wales schools have the services of a school counsellor to assist teachers in the ongoing support of students who have been abused. School staff work closely with Government and non-government agencies in the community and make referrals as appropriate. In addition, officers from the New South Wales Health Department's Sexual Assault Service, Child Protection Units and Community Health Centres provide court support and counselling to children who have been abused.

Northern Territory

1749. The Criminal Code deals with sexual crimes against children. It is a crime for any person: to maintain an unlawful sexual relationship with a child under 16; to indecently deal with a child under 16; or to attempt to procure a child to have carnal knowledge or commit an act of gross indecency. The offence of indecent dealing covers exposure of children to indecent objects, films, video and audio tapes, photographs and books; or recording the visual image of a child under 16. If the child is under the age of 12 years and the offender is an adult, the offender is liable to imprisonment for 10 years.

1750. In relation to the use of children in prostitution, such exploitation is prohibited by the Prostitution Regulation Act 1992. The Act makes it an offence: to coerce or induce an infant to take part in prostitution; to allow an infant to take part in prostitution; to obtain payment in respect of prostitution services provided by an infant; and to enter into an agreement for the provision of prostitution services by an infant. For all the above offences a higher penalty is imposed if the child is under 14 years of age. It is also an offence for an infant to offer or provide prostitution services.

1751. The exploitative use of children in pornographic performances and material is prohibited by the Criminal Code. It is an offence to sell, advertise for sale or publish pornographic material depicting a child. Recent amendments of the Code have made it an offence to possess such material. The penalty is 10 years imprisonment. The Code also makes it a criminal offence to possess child pornography.

Queensland

1752. The Criminal Code and the Children's Services Act 1965 contain a number of sections creating offences dealing with the sexual exploitation and sexual abuse of children. The Child Exploitation Squad has been formed to specifically investigate these type of offences. A number of community policing preventive programs have been instituted as a preventive/educative measure to boost community awareness and inculcate protective behaviours in children.

1753. Children who are the victims of child abuse and neglect can receive treatment from public hospitals. In addition, there are community based Youth Welfare and Guidance Clinics in most major centres. The Department of Family Services and Aboriginal and Islander Affairs provides a sexual abuse and counselling and support service to the victims, perpetrators and non-offending parents in the metropolitan area of Brisbane. The Department of Education has programs within its Human Relationship Education program which give students skills to deal with abuse including sexual harassment. The Anti-Discrimination Act prohibits sexual harassment and the law applies equally to sexual harassment of children as to sexual harassment of adults.

South Australia

1754. The Criminal Law Consolidation Act 1935 covers specific sexual offences against children including sexual intercourse and indecent assault against children under the age of 18 years, and provides for penalties in accordance with the child's age and the offence. The Criminal Law Consolidation Act also provides that a person who, with a view to gratifying prurient interest, incites or procures the commission by a child of an indecent act or causes or induces a child to expose any part of his or her body is guilty of an offence and liable to a term of imprisonment for a term not exceeding two years for a first offence and for three years for any subsequent offence. Measures to protect children from abuse and harm, including sexual harm and emotional and psychological damage, are contained in the Children's Protection Act 1993 and the Community Welfare Act 1973, which makes it an offence to maltreat or neglect a child. Recent amendments to the Summary Offences Act 1953 make it an offence to possess child pornography which includes material held in computer data form.

Tasmania

1755. The Child Welfare Act 1960, Child Protection Act 1974, Criminal Code, Police Offences Act and the Classification of Publications Act 1984 prohibit the sexual abuse or exploitation of children. The Classification of Publications Act makes it an offence to:

- print, photograph, record or make a child abuse publication; or
- reproduce a child abuse publication.

1756. It is also an offence to invite or procure or attempt to procure a child to be in any way concerned in the making of a child abuse publication. The Act also makes it an offence to possess a child abuse publication. For the purposes of the Act a child abuse publication is a film, video or publication that 'depicts in pictorial form a person (whether engaged in sexual activity or otherwise) who is, or is apparently, a child in a manner that is likely to cause offence to a reasonable adult.'

Victoria

1757. The Child Protection Unit, Royal Children's Hospital, provides assessment and treatment services to children who have been victims of sexual assault/abuse, and their families. While the unit's target group is child victims, siblings and non-offending parents are also treated. Programs for perpetrators are offered through the Office of Corrections. Centres Against Sexual Assault (CASAs) provide both crisis and longer term assistance to child and adult victims and survivors of sexual assault/abuse. With the exception of CASA House (located a short distance from the Royal Children's Hospital Child Protection Unit), all Centres Against Sexual Assault provide services to children who are victims of sexual assault/abuse. Some child, adolescent and family psychiatry services have specialist child sexual abuse programs with staff teams who have particular expertise in the area. These teams provide a resource to other staff in the service, as well as to other relevant agencies, concerning the assessment and treatment of children who have been victims of sexual abuse and their families.

1758. The Classification of Films and Publications Act 1990 makes it an offence to incite or procure a child to be in any way concerned in the making of an objectionable film. An objectionable film or publication means an unclassified film or publication which depicts or describes a child who is, or appears to be, under the age of 16 years, where the depiction is likely to cause offence to a reasonable adult person. A 1992 amendment to the Act prohibits the possession of films or photographs which depict children engaging in sexual activity or posing in an indecent manner. The Prostitution Regulation Act 1986 prohibits allowing, inducing or forcing a person under 18 years of age to engage in prostitution.

Western Australia

1759. In Western Australia the Criminal Code provides a comprehensive scheme to prevent sexual offences against children (sections 319-322A and sections 329-330). It is also an offence to permit a boy under the age of 18 years to attend a brothel for the purpose of having unlawful carnal knowledge (section 195).

1760. The Code makes it a criminal offence to procure a child to have unlawful carnal connection; or to work as a prostitute in Australia or elsewhere; or to leave Western Australia or the child's usual residence with the intention of working as a prostitute (section 191). It is also an offence to procure a child to have unlawful carnal knowledge by threats, fraud or by administering drugs (section 192). The maximum penalty for these offences is two years imprisonment.

1761. The Child Welfare Act 1947 allows the Department for Community Development to initiate care and protection proceedings where children are sexually abused. The Department has also developed reporting protocols with other agencies including the Health Department, Police and Ministry of Education. The Child Welfare Act 1947 also prohibits the employment of children for indecent purposes (see Part H (c) (i), Special protection measures, Economic exploitation, including child labour, above).

1762. The Department also has the Child Sexual Abuse Treatment Service Scheme Funding Program which provides funds to agencies, service providers, private practitioners and self help groups to deliver treatment services to children and family members who have experienced intra-familial child sexual abuse. In 1990-91 over 240 children and adults received services from these agencies.

1763. The Health Department of Western Australia has developed guidelines for the management of child abuse and neglect which are available to all health professionals and other Health Department staff. When the guidelines were introduced an extensive education process was undertaken to introduce them to all levels of health workers. The Guidelines are currently being updated in order to be more culturally focussed. Staff Development programs have been developed in various regions as have programs for staff working at Princess Margaret Hospital. If instances relating to sexual exploitation come to the attention of the Department staff, the expectation is that they would be reported to the Police Child Abuse Unit and/or the Department for Community Development.

1764. The Criminal Code, Videotapes Classification and Control Act 1987 and Indecent Publications and Articles Act 1902 contain provisions which impose penalties on adults who exploit children for pornographic or other indecent purposes. The Criminal Code makes it an offence to indecently record a child. 'To indecently record' means to take, or permit to be taken, or make or permit to be made, an indecent photograph, film, video tape, or other recording, including sound recording (sections 319 320, 321, 321A, 322, 329 and 330). The maximum penalty is 10 years imprisonment. It is also an offence to show offensive material to children under 16 years of age. The maximum penalty is five years imprisonment.

(iv) Other forms of exploitation (Article 36)

Article 36

> ***States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.***

1765. All States and Territories have legislation which protects children from physical and psychological abuse and exploitation. This is discussed more fully under Part E (i), Family environment and alternative care, Abuse and neglect.

1766. The Victorian Government has identified the vulnerability of young people to exploitation by private education institutions offering courses which are not accredited. In response to this problem the Victorian Government has produced and distributed a pamphlet to young people seeking further education in commercial colleges.

(v) Sale, trafficking and abduction (Article 35)

Article 35

> ***States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.***

Federal matters

1767. Australia has ratified the Hague Convention on the Civil Aspects of International Child Abduction. International child abduction is discussed in Part E (h), Family environment and alternative care, elicit transfer and non-return.

1768. Sale and the trafficking of children has not been demonstrated to be a problem in Australia, but the topic will be considered in the context of the development of a Model Criminal Code. The Model Criminal Code is being prepared by a Committee of the Standing Committee of Attorneys-General and is designed for adoption by all Australian jurisdictions by the year 2001.

State and Territory matters

1769. Most States and Territories have legislation prohibiting the sale, trafficking and abduction of children:

New South Wales:	Crimes Act 1902, sections 86-91B
	Children (Care and Protection) Act, sections 27(2), 42, 44, 54 and 93
	Adoption of Children Act, sections 50, 51 and 52
Queensland:	Criminal Code, sections 363, 363A
South Australia:	Criminal Law Consolidation Act 1935
Tasmania:	Adoption of Children Act 1968, sections 43-44
Australian Capital Territory:	Adoption of Children Act 1993, sections 94- 96
Northern Territory:	Adoption of Children Act 1994

Australian Capital Territory

1770. In the Australian Capital Territory the Adoption of Children Act 1993 contains provisions regarding the sale and traffic of children. Section 94 makes it an offence to make, give or receive, or agree to make, give or receive a payment or reward in relation to the adoption of a child unless such a transaction is approved by the Director of Welfare or the Supreme Court. Likewise it is an offence to advertise in any way that a child is available for adoption or that a person wishes to adopt a child. This legislation does not deal with the case of children who are sold for specific purposes, such as for their organs. At present in the Australian Capital Territory, donations of organs and blood from children are strictly regulated, and may only occur in limited circumstances (Transplantation and Anatomy Act 1979).

New South Wales

1771. The Crimes Act 1902 provides for offences for abducting or kidnapping a person, for procuring a person for the purposes of prostitution, and for taking a child with intent to deprive a person having lawful charge of the child. Section 43 of the

Crimes Act 1902 provides for an offence of abandoning a child under the age of two years so that its health is likely to be seriously injured (this has implications for preventing abduction of children). Sections 27(2), 42 and 44 of the Children (Care and Protection) Act 1987 create an offence of unauthorised removal of children and unauthorised foster placements. Section 45 of the Children (Care and Protection) Act 1987 prohibits the issuing of lump sum payments for the care of children. The prescribed penalty for these offences is $1,000 or 12 months imprisonment. Section 93 of the Act provides for the return of wards/protected persons who have been abducted. The Human Tissue Act 1983 contains provisions prohibiting trading in human tissue.

1772. Sections 50, 51 and 52 of the Adoption of Children Act 1965, prohibit payment in consideration of an adoption, unauthorised adoption arrangements and restrict the advertising of adoptions.

Queensland

1773. Section 363 of the Queensland Criminal Code prohibits child-stealing and abduction. It is a defence to a charge of any of the offences defined in this section to prove that the accused person claimed in good faith a right to the possession of the child, or, in the case of a child whose parents were not married to each other at the time of its conception and have not since married each other, not being a child who has been adopted as aforesaid, is its mother or claimed in good faith to be its father.

1774. Section 363A of the Criminal Code provides that any person who unlawfully takes an unmarried child under the age of 16 years out of the custody or protection of the child's father or mother, or other person having the lawful care or charge of the child and against the will of the father, mother or other person, is guilty of a misdemeanour and is liable to imprisonment for two years. It is immaterial that the offender believed the child to be of or above the age of 16 years or that the child was taken with the consent of or at the suggestion of the child.

South Australia

1775. South Australia has similar legislation to the Australian Capital Territory concerning payments for adoption and regulating organ donation. In addition section 80 of the Criminal Law Consolidation Act makes it an offence to abduct a person under the age of 16. Kidnapping is a separate offence under the Kidnapping Act, 1960 with a penalty of life imprisonment.

Victoria

1776. In Victoria the Crimes Act 1958 provides separate offences for child stealing and abduction of a child under the 16 years of age. The Human Tissue Act 1982 contains provisions prohibiting trading in human tissue.

Western Australia

1777. Section 343 of the Criminal Code creates the offence of child stealing. The provision makes it an offence to forcibly or fraudulently take or entice away or detain a child under the age of 16 years with an intent to deprive a parent or person in charge of the child of possession of the child. It is also an offence to knowingly receive or harbor a child that has been taken, enticed or detained. The maximum penalty is 20 years imprisonment. However, it is a defence that the accused person claimed a right to the possession of the child or, in the case of an illegitimate child, is its mother or claims to be its father. It is unlawful to publish a report of child stealing within seven days or before the child is returned unless approved by the Commission of Police.

(d) Children belonging to a minority or an indigenous group (Article 30)

Article 30

> ***In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.***

Federal matters

1778. Australia is a multicultural society and recognises the rights of people from minority and indigenous groups to enjoy their culture, profess and practise their own religion and use their own language. This section deals with a range of general measures adopted by the Federal Government which are designed to promote the acceptance of cultural diversity and facilitate the full enjoyment of cultural rights Some policies are directed to the ethnic and indigenous communities as a whole but affect the cultural environment of children of those group and are therefore seen as relevant to Article 30. Other measures are specifically aimed at children. The right to freedom of thought, conscience and religion is discussed above in Part D (e).

General measures relevant to securing the rights under Article 30

1779. The Federal Government and all States and Territories except Tasmania have passed anti-discrimination legislation which prohibits discrimination on the grounds of race. The Federal Racial Discrimination Act 1975 applies in Tasmania. Anti-discrimination legislation is discussed in Part C (a), General Principles, Non-discrimination, above.

1780. In recent years a number of Reports have been produced by the Human Rights and Equal Opportunity Commission which have examined issues which are of relevance to securing the rights of the child under this Article of the Convention.

1781. The Report of the National Inquiry Into Racist Violence was produced by the Human Rights and Equal Opportunity Commission in 1991. It examined racism and racist violence in Australia and the existing laws and strategies available to confront these problems. In its evaluation the Report touched on racism and racist violence encountered by children in schools and colleges. In response to the findings of the Report, the Federal Government introduced racial vilification legislation in 1994 in the form of the Racial Hatred Bill. The bill was passed by the House of Representatives in November 1994, and amended by the Senate in August 1995. As assented to in September 1995 and coming into force on 13 October 1995, it creates civil prohibition against racial hatred by inserting new sections 18B to 18E into the Racial Discrimination Act 1975. This importantly provides an avenue of complaint to the Human Rights and Equal Opportunity Commission.

1782. The Race Discrimination Commissioner provides annually a report on issues relevant to People from Non-English Speaking Backgrounds. The latest report of the Commissioner was tabled in the Federal Parliament in late 1994. The Government is considering the recommendations and findings of the report.

1783. The Human Rights and Equal Opportunity Commission has also undertaken anti-racist community education projects, in particular the Different Colours, One People campaign which was directed at young people.

1784. The Council for Aboriginal Reconciliation, the Aboriginal and Torres Strait Islander Commission (ATSIC) and the Aboriginal and Torres Strait Islander Social Justice Commissioner have all provided submissions to the Government in March and April 1995 on measures which might be appropriate to advance the cause of social justice for Aboriginal and Torres Strait Islander people. The Government will be considering the submissions carefully in putting together the Social Justice Package for Indigenous Australians which is the final stage of the Government's response to the Mabo decision of the High Court of Australia.

Inquiry into the Removal of Aboriginal Children

1785. The Federal Government has requested the Human Rights and Equal Opportunity Commission to conduct an inquiry into the past laws, policies and practices that resulted in the compulsory separation of Aboriginal and Torres Strait Islander children from their families, to examine the need for any changes in current laws or practices to further the location or reunification of Aboriginal families, and to advise on any change with respect to the placement and care of such children taking into account the principle of self-determination by Aboriginal and Torres Strait Islander peoples.

1786. Under past assimilationist policies many Aboriginal children were forcibly removed from their families. The 1994 Australian Bureau of Statistics survey of Aboriginal and Torres Strait Islander people revealed that over 10 per cent of Aboriginal people over the age of 25 reported being taken away from their birth families.

1787. The proposed inquiry will be a significant step towards the process of reconciliation between Aboriginal and non-Aboriginal people. The Commission is required to report no later than December 1996.

Link-up Program for Aboriginal and Torres Strait Islander families

1788. In response to the Royal Commission into Aboriginal Deaths in Custody, ATSIC now funds the Link-up Program to help to locate and reunite Aboriginal and Torres Strait Islander families who have lost contact with each other through policies of assimilation, and fostering and adoption.

1789. The Program also provides the opportunity for Link-up researchers, counsellors and other workers to meet. By sharing skills, experience and knowledge, they can develop ways of overcoming common problems associated with locating missing family and community members.

1790. Funding has been provided to the Northern Territory and all States, except South Australia (which receives State Government resources) for link-up services and activities, either to discrete Link-up Services or through the Aboriginal and Islander Child Care Agencies.

1791. Funding for projects in Victoria and Tasmania, and for reunions in Darwin, was supplemented from ATSIC global allocation when resources were insufficient to meet demand. In Western Australia, Curtin University's Aboriginal Studies Unit was provided with funding to train Aboriginal and Torres Strait Islander families to undertake their own research. The additional funding enabled a more comprehensive service to be provided, including assistance in meeting reunion costs. Each organisation reported an increase in successful reunions and/or locations as a result of the additional resources.

1792. All funding is allocated to Aboriginal and Torres Strait Islander organisations, and ATSIC Regional Councils will monitor the implementation and performance of the Program. In Western Australia, the Link-up Program is overseen by a local committee as well as the Regional Council.

1793. Funding will continue, subject to reporting conditions and requirements, to support the work of link-up services in each of the States and the Northern Territory.

1794. The ATSIC State Advisory Committee (Regional Council Chairpersons and Commissioners) in Western Australia has decided that a metropolitan-based service with regional services consolidated through the Department of Community Development and the metropolitan service would be appropriate. Regional Councils are considering the feasibility of establishing local services.

Access and Equity

1795. In 1985, the Federal Government adopted the Access and Equity Strategy for implementation throughout the Australian Public Service. The Strategy ensures that all Australians irrespective of their race, culture, religion or language, are able to benefit equitably from resources which the Government manages on behalf of the community. The Access and Equity Strategy initially targeted Australians of non-English speaking background and in 1989 was extended to include Aboriginal and Torres Strait Islander peoples.

1796. In May 1993 the Minister for Aboriginal and Torres Strait Islander Affairs, initiated an inquiry into the implementation of the Federal Government Strategy as it relates to Aboriginals and Torres Strait Islanders. The report of this Inquiry, Rhetoric or Reality? was produced in late 1993 by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs. The Report pointed out that there is still a large proportion of Aboriginal peoples and Torres Strait Islander people who are not getting equitable access to, and equitable outcomes from, the range of Government services available to all Australians. The Committee identified the provision of adequate and appropriate health services as the area which required the most urgent attention.

1797. The Government has now produced the Government Response to Rhetoric or Reality.

1798. A principal means of monitoring Access and Equity for indigenous Australians is through the monitoring and reporting of the implementation of the recommendations of the report of the Royal Commission into Aboriginal Deaths in Custody. In addition, the Government has established an interdepartmental working group to examine ways in which departments and agencies can improve outcomes reporting for indigenous people. A plan of action will be presented to the Government in late 1995. The Government will continue to monitor the impact of the Access and Equity Strategy through the mechanism of the Access and Equity Annual Report to the Prime Minister.

Preservation of Aboriginal languages

1799. The Federal Government recognises that language is an essential part of a person's identity and is of critical importance in the transmission of culture. It is estimated that originally there were some 250 indigenous languages in Australia. In 1994 there were about 90 living languages. Of these, there are only 10 which have 1,000 or more speakers, while about 50 languages have 100 or fewer speakers. Only 20 or so languages are considered to be in a healthy state.

1800. The question of language maintenance and preservation was comprehensively examined in 1992 by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs in its report Language and Culture - A Matter of Survival. In response to that inquiry the Federal Government funded the Aboriginal Languages Initiatives Program which was introduced as part of the Australian Languages and Literacy Policy in 1992.

1801. The Aboriginal Education Strategic Initiatives Program provides a coordinated framework and supporting funding for the implementation of the National Aboriginal and Torres Strait Islander Education Policy. Included in the total allocation for the 1993-95 triennium is approximately $17.5 million to address the finding of the Royal Deaths into Aboriginal Deaths in Custody and $17 million for initiatives related to the Aboriginal Literacy Strategy and the Aboriginal Languages Education Strategy. Funds to address the Royal Commission's findings will be used to employ more Aboriginal and Torres Strait Islander education workers and expand pre-school workers by more than 600. The Aboriginal Literacy Strategy represents an intensification of efforts to improve English literacy among Aboriginal and Torres Strait Island school children and adults with limited experience of school. The Aboriginal Languages Education Strategy is designed to promote and facilitate the teaching of Aboriginal and Torres Strait Islander languages in schools, to develop bi-lingual or bi-cultural education programs, and to move towards the teaching of Aboriginal languages in TAFE and higher education. The Federal Government has provided $5.4 million to fund the Strategy, the majority of this funding goes to literacy rather than language programs.

1802. The most important education initiative aimed at maintaining traditional languages has been the development of bilingual schools and both ways schools. The first bilingual schools began in the Northern Territory in the 1970s. By 1992 there were 35 such schools. Outside of the Northern Territory and South Australia, there are no bilingual schools in the Government sector. Most independent Aboriginal schools have a strong bicultural focus and are supported in their language programs through supplementary funding from the Federal Government.

1803. The Federal Government has also funded the Australian Indigenous Languages framework, a pilot study established with a view to introducing the study of Indigenous languages into Years 11 and 12 in schools around Australia. The framework is designed to accommodate all indigenous languages and linguistic heritage, including languages spoken by entire communities and languages about which little is known. Materials have been developed and are being trialed in schools around the country.

1804. The Federal Government also promotes public awareness of indigenous languages and the use of Aboriginal English and creole in Australian schools as a way of encouraging self-esteem and higher levels of achievement overall. The Federal Minister for Schools, Education and Training released a booklet in March 1995 entitled Langwij Comes to School. The booklet is a resource for primary school teachers about the use and value of Aboriginal English. It is designed to assist teachers to accept and respect Aboriginal English as the first language of their students and introduce Aboriginal students to Australian English as a second language after their confidence at school has been established. The strategy is an important step towards improving literacy among 80,000 Aboriginal children.

1805. In 1993 a Reference Group was appointed to oversee a National Review of Education for Aboriginal and Torres Strait Islander Peoples. The Final Report of the National Review was released in 1995. In relation to the maintenance and continued use of indigenous languages the Reference Group recommended that State and

Territory curriculum, assessment and accreditation authorities develop courses of study which allow students to undertake study in an Aboriginal or Torres Strait Islander language in primary and/or secondary school. The report is currently under consideration by the Federal Government.

South Sea Islanders - cultural maintenance

1806. In 1991 the Human Rights and Equal Opportunity Commission released its report, A Call for Recognition, A Report into the Situation of Australian South Sea Islanders. The report is based on a census taken of the Australian South Sea Islander community. This census was used to gather enough data to paint a statistical sketch of the community. The evidence gathered indicates that Australian South Sea Islanders are disadvantaged in many ways. The report makes six general recommendations concerning both Federal and State matters. The Prime Minister has referred the Report to the States so that they may consider their responses to it. In general States have been supportive of the recommendations.

1807. The Federal Government's response to the inquiry was tabled in Parliament on 25 August 1994 by the Federal Attorney-General, Michael Lavarch. It formally recognised Australian South Sea Islander people as a distinct minority group and announced several new initiatives including a cross portfolio research project to gather data on Australian South Sea Islanders to assist service delivery agencies in meeting the needs of the community. The issue of access and equity to education and vocational training is discussed in Part G (a), Education, leisure and cultural activities, Education, including vocational training and guidance.

1808. Recommendation six of the report states that relevant Government agencies should take steps to increase public awareness of South Sea Islanders and their role in Australian history, including through inclusion in school curricula and preservation of South Sea Islander historical sites and archival material.

1809. In response the Federal Government is committed to establishing a Cultural Awareness Awards Scheme, to be funded under the Department of Foreign Affairs and Trade's International Cultural Relations Program, to assist Australians of South Sea Islander descent to visit their countries of family origin, to research traditional custom and genealogy, and to use this knowledge for the benefit of their home communities in Australia. Secondly, funding support of a total of $75,000 over two years has been approved under AusAid's Development Education Special Projects Scheme, for the development of a special curriculum package for Australian South Sea Islanders in Queensland by the Queensland Department of Education. This initiative will provide historical and contemporary Australian South Sea Islander cultural education materials for early childhood and primary school students.

1810. The Department of Foreign Affairs and Trade is funding a photographic and ethnographic public exhibition depicting the history and development of Australian South Sea Islanders. The exhibition is touring selected centres in Australia and Pacific countries. It is proposed that the photographic component of the exhibition will be given to the Australian South Sea Islander community for permanent housing in an agreed venue.

1811. In addition the Federal and Queensland Governments are cooperating in the restoration of two old community buildings in Bundaberg which have a historical association with the South Seas Evangelical Church. The restored buildings will be used by the local South Sea Islander community for a church and general community purposes.

The Office of Multicultural Affairs

1812. The Office of Multicultural Affairs (OMA) was established in the Department of the Prime Minister and Cabinet in 1987. Although the Office does not have a specific role with regard to children, its general role of fostering multiculturalism would benefit children of non-English-speaking and indigenous backgrounds. It was involved in the development of the National Agenda for a Multicultural Australia, which was released by the Prime Minister in 1989. The Agenda contained a commitment by the Government to develop and implement programs and policies which would foster and promote awareness of the importance of harmonious community relations. The National Multicultural Advisory Committee, established in 1994 to advise the Prime Minister on policies and programs under the Agenda, has reviewed progress on Agenda initiatives (most of which are now in place) and has presented its report to Government about priorities and opportunities in the 1990s and beyond.

1813. The OMA assists Government departments to develop three-year plans to give effect to the Access and Equity Strategy referred to above.

1814. These plans, the first of which were issued in 1986 for the period commencing July 1987, included groups to be targeted, proposed standards of service and procedures and means of monitoring and evaluating performance. The needs of migrant women and their access to services and programs were also specifically identified in these plans. OMA is required to produce an Access and Equity Annual Report to the Prime Minister at the end of each calendar year. The second annual report was tabled in Parliament in November 1994 and included Access and Equity statements from 37 Federal agencies.

1815. State Ethnic Affairs Commissions/Bureaux operate in all States and in the Northern Territory. These organisations work closely with the Office of Multicultural Affairs in implementing initiatives established under the Agenda for furthering multiculturalism in Australia.

Settlement programs for migrants

1816. The Department of Immigration and Ethnic Affairs administers programs which target the settlement needs of migrant youth. At present there are 16 Grants-in-Aid to ethnic and other non-government organisations for services to migrant youth. This includes Grants-in-Aid specifically for refugee youth. The overall average value of a grant is about $46,000 a year. There is also one grant under the Migrant Access Projects Scheme of $50,000 to assist service agencies in New South Wales to establish the needs of non-English speaking background youth.

Ethnic media

1817. The Special Broadcasting Service television and radio services, which provide multicultural ethnic programming, continue to build on the wide acceptance and prestige they have established within the Australian community. The ethnic press has expanded to a situation where there are now over 120 newspapers and magazines, published in more than 30 languages, servicing people of non-English speaking background throughout Australia. All are independently funded.

Community Broadcasting

1818. Community broadcasters operate non-profit services for the benefit of local communities in response to community needs. The Federal Government continues to support community broadcasting as a valuable means of enhancing its objectives of greater diversity in the media and improved access and equity for those whose voices are not regularly heard on other media, including children. This support is demonstrated by financial assistance to the sector as well as access to spectrum.

1819. The Government makes a substantial annual grant to the Community Broadcasting Foundation, which distributes the funds to the sector. The Government advances its social justice strategies by specifying the proportions of this annual grant that should be directed to various sub-sectors with special needs, including indigenous and ethnic broadcasters.

Languages

1820. Support is given in many jurisdictions to foster the use of ethnic community languages. There are also active programs of support for ethnic radio, multicultural television, ethnic newspapers, the use of universal signs and ethnic schools. However, English is the common language for social communication, and members of the community are encouraged to learn English.

1821. Special programs of assistance are available for both children of school age and adults. Assistance to expand and improve the learning of languages other than English is provided by the Federal Government through the School Language Program. This program has two elements: the Community Languages Element and the Priority Languages Element. The objectives of the Community Languages Element are to assist students of non-English speaking background (including Aboriginal and Torres Strait Islander students) to maintain their respective languages and cultures and to increase awareness among all students of the different community languages and cultures within Australian society. In 1994 the allocation for this program was $10.2 million. See also Preservation of Aboriginal Languages above, Education below and Australia Council, below.

Interpreter services

1822. It is recognised that there will always be groups in the community who will not be able to communicate in English or whose English will not be fluent enough to enable them to function without some assistance. These groups include new arrivals and the elderly. Interpreter services are therefore provided by most jurisdictions to assist migrants with language difficulties. The federally funded and operated Telephone Interpreter Service covers most urban and regional centres where people whose first language is not English live. There is also a Translation Service for written documents. There are also active programs of support for ethnic radio, multicultural television, ethnic newspapers, the use of universal signs and ethnic schools. See Part H(b)(i) Children in conflict with law, the administration of justice (Article 40) above for explanation of Federal Government initiatives in the improvement of interpreter services to people of non-English speaking backgrounds and Aboriginal and Torres Strait Islander peoples.

Education

1823. Various Government funded schemes operate to assist schools to meet the language needs of children from ethnic minorities:

- Community-run ethnic schools engaged in teaching language and culture to ethnic children on a part-time basis are eligible for an annual Federal Government subsidy for each child.
- The Federal Government through the Schools Commission's Multicultural Education Program provides funds for Government and non-government schools which are coordinated at State level by State and Territory committees drawn from all school sectors (Government, Catholic, independent and ethnic schools). Funds under the Program are available for activities such as language teaching and inter-cultural studies.

The Australia Council

1824. The Australia Council is regarded as one of Australia's most important cultural resources. The Council works closely with schools and post-secondary education institutions. The Federal Government recently announced its commitment to fund a system of Young Australian Artists Creative Fellowships to complement the existing Australian Arts Creative Fellowships Scheme.

1825. The Australia Council has also developed closer links with ethnic communities and works to ensure that ethnic arts receive an equitable proportion of funding for cultural activities. The Council's Community Cultural Development Board discusses with ethnic communities and artists their needs and exchanges information about new initiatives, developments and publicity. A directory of Ethnic Arts has been published. An Ethnic Artists Service has been established and the Australia Council's Visual Arts/Crafts Board, in conjunction with the Ethnic Affairs Commission of New South Wales, works towards development of opportunities for ethnic women to practise traditional crafts in a way which will result in rewarding employment and social contact. The Performing Arts Board of Australia also has a program to provide professional service assistance to amateur ethnic dance groups. The role of the Australia Council in the promotion of literature for young people is discussed at Part D (d) Access to information.

Migrant access and equity

1826. In May 1995 the House of Representatives Standing Committee on Community Affairs commenced a review of Federal funded and State/Territory and local Government provided services to migrants to ascertain the extent to which access and equity principles are applied in the delivery of these services.

1827. The inquiry, which was referred to the Committee by the Minister for Immigration and Ethnic Affairs, Senator the Hon Nick Bolkus on 10 November 1994, is looking at a range of matters including the recognition of overseas professional qualifications, availability of interpreter services, cross-cultural training programs for service deliverers and the impact and evaluation of access and equity principles on service delivery.

State and Territory matters

Australian Capital Territory

Multicultural policies

1828. The English as a Second Language (ESL) and Multicultural Unit of the Social Justice Section in the Department of Education has specific responsibility for programs which assist students from non-English speaking backgrounds. The programs assist these students to achieve improved learning outcomes through intensive English programs as well as other educational programs in mainstream settings.

- Newly arrived students with little or no English receive intensive English teaching at Introductory English Centres to prepare them for study in their local schools.
- The ESL program in local schools is determined by the needs of the student population within a particular school. It can include intensive individual withdrawal, small group work, team teaching and whole class instruction by specialist ESL teachers across the Primary, Secondary and College sectors.
- The Language for Understanding Across the Curriculum (LUAC) team of specialist ESL teachers provides teacher inservicing and support for students not receiving direct ESL teaching.
- In the Pre-school sector, itinerant ESL pre-school teachers work with identified ESL students in the year before school entry (priority age children) and consult with pre-school teachers on effective teaching and management strategies.
- The ESL Early Entry Preschool Placement Program provides improved access for children with little or no exposure to English at home. These children are offered extra sessions for the semester before normal entry to pre-school.

Indigenous policies

1829. The Department of Education and Training also addresses the issues of access and equity for Aboriginal students by establishing an educational climate where increases in participation rates, achievement levels, school retention rates and enhanced self-esteem levels can be achieved. To work towards these aims three Home School Liaison Officers are based within the School Justice Programs Section. Five Aboriginal Education Assistants work in schools with individual and small groups of Aboriginal students. An Aboriginal Artist in Residence is working with school communities to raise the cultural awareness of all students.

New South Wales

Multicultural policies

1830. The Ethnic Affairs Commission and the Office of Aboriginal Affairs in the Premier's Department assist and advise the Government on the development of policies and programs which respect the rights of ethnic minorities and indigenous people.

1831. The Ethnic Affairs Commission Act 1979 has the following objectives:

- to encourage the full participation of persons comprising ethnic groups in the social, economic and cultural life of the community;
- to promote the unity of all ethnic groups in the community as a single society consistently with the recognition of their different cultural identities; and
- to promote liaison and co-operation between bodies concerned in ethnic affairs.

1832. The Ethnic Affairs Commission assists New South Wales public agencies to develop policies and programs which provide access and equity to government services for all people in New South Wales culturally diverse community. New South Wales public agencies are required to develop formal plans, and statements of outcomes to be achieved as part of their ethnic affairs policy and programming responsibilities. These policies and programs are based on the principles that all people in culturally diverse society have the right to access Government services, to be consulted in the development of these services, to contribute fully to the further development of the society and to respect for their cultural and linguistic diversity.

1833. Some of the initiatives relating to youth in a culturally diverse society undertaken by the Department of Community Services are:

- employment of 52 bilingual District Officers (Multicultural) to work with families of non-English speaking background; and
- employment of six District Officers (Refugee Children) to provide support to unattached detached refugee minors, and production of information materials in three languages of services for refugee minors.

1834. The Multicultural Education Initiatives are evidence of the commitment of the Government to promoting multiculturalism within the context of a cohesive, democratic society. They include:

- enhancement of the English as a Second Language Program;
- strengthening multicultural perspectives in school curricula;

- promotion of racial harmony in schools through the development of an Anti-Racist Policy;

- maximising the participation of students of non-English speaking background in all levels of the school education system; and

- increasing access to programs in languages other than English to assist all students to acquire, maintain and develop these skills.

1835. Community Languages Schools are community based non-profit schools established by community groups to maintain and develop their linguistic and cultural heritage.

1836. In 1995, 636 schools in New South Wales offer 64 languages to 42,680 students on Saturdays. A number of these students will present these languages for examination for the Higher School Certificate.

The Multicultural Youth Program

1837. The Multicultural Youth Program:

- monitors the welfare and community service needs of young people of non-English speaking backgrounds;

- develops and implements strategies that ensure that youth services provided or resourced by the Government are accessible, available and appropriate to people of non-English speaking backgrounds;

- develops and provides ethno-specific and multicultural youth services that are managed by young people of non-English speaking backgrounds;

- employs bilingual staff to provide appropriate casework support to young people on non-English speaking backgrounds; and

- provides supervision, counselling and support to protected persons (non-citizen children) and an initial (six months) supervision and settlement support to detached refugee minors under the Refugee Minor Program.

1838. Initiatives of the Multicultural Youth Program include:

- employment of 60 bilingual District Officers (Multicultural) to work with families which include adolescents and children of non-English speaking backgrounds;

- employment of six District Officers (Refugee Children) to provide support to unattached/detached refugee minors, and production of information materials in three languages of services for refugee minors; and

- establishment of District Officer (Young Offender) positions to work with Indo-Chinese youth.

Indigenous policies

1839. The Aboriginal Education Policy requires all schools to examine their curriculum to ensure all students learn about Aboriginal culture, people and heritage. In schools attended by Aboriginal children, staff are required to ensure educational support programs are implemented to meet the specific needs of every Aboriginal student. A key requirement of the policy is that school staff consult with and involve local Aboriginal people in dealing with the educational challenge facing Aboriginal students. The Aboriginal Artists in Residence Program aims to provide targeted schools with resources to employ an Aboriginal artist in art classes so that art activities will involve Aboriginal cultural knowledge and experience.

1840. The New South Wales Department of Juvenile Justice supports the right of juvenile offenders to their culture and identity. The Department has developed a range of Aboriginal specific programs including a rural Aboriginal juvenile foster placement program, a multi function program, 'Nardoola', for Aboriginal juvenile offenders who are refused bail or on supervised orders which is run in conjunction with local land councils and a number of community justice councils. The Department provides courses in Aboriginal history and culture to detainees. In addition the Department of Juvenile Justice, through recommendations contained in the recent White Paper on Juvenile Justice, will commence the following projects: Aboriginal bail hostel, Aboriginal counselling program, programs to be undertaken throughout supervision orders aimed at addressing causes of offending, funding for community groups to provide post release support and accommodation and ongoing consultation with Aboriginal communities regarding suitable programs.

Northern Territory

Multicultural policies

1841. The Department of Education runs a number of programs designed to improve the English language competence of students of non-English speaking parents. The Office of Ethnic Affairs also has many programs that deal with access and equity for ethnic minorities. The Interpreter and Translator Service deals with requests from Government, non-government groups, ethnic groups and individual members of the community for interpreting and translating. There is an Overseas Qualification Unit which is responsible for assisting ethnic people on the procedures involved in obtaining recognition of their qualifications.

Indigenous policies

1842. The Northern Territory Government recognises that Aboriginal and Torres Strait Islander peoples have special needs in relation to delivery of services and that mainstream services may not always meet these needs. The Government has therefore established sections within some Government departments to cater for Aboriginal and Torres Strait Islander peoples' needs. These sections have an important role in co-ordinating with other Northern Territory Government and Federal Government agencies that also deliver services to Aboriginal and Torres Strait Islander peoples. Some examples of these sections are:

- The Aboriginal Development Unit within the Department of Education. This Branch is responsible for employment and training of Aboriginal and Torres Strait Islander peoples on behalf of the Northern Territory Government. The Unit also provides funds for training programs to Aboriginal and Torres Strait Islander groups and individuals.
- The Department of Lands, Housing and Local Government has an Aboriginal Housing Advisory Service. This service is provided to cater for the specific housing needs of Aboriginal people, but also advises and helps anyone who seeks advice to help with housing needs.
- The Conservation Commission has a number of Aboriginal Liaison Units which are located on a regional basis and co-ordinate Aboriginal policies and programs. These units develop policies with the intention of increased Aboriginal involvement in the Parks through employment, joint management arrangements for Parks and other Conservation initiatives.

1843. The Northern Territory Government also has an Aboriginal Employment Development policy whose purpose is to complement the Federal policy by promoting Aboriginal and Torres Strait Islander peoples' economic independence from Government and to reduce their dependency on welfare, in accordance with Aboriginal and Torres Strait Islander peoples' demands for employment and self-determination. The broad objectives of the policy are to achieve:

- employment equity with other Territorians, that is, to increase the proportion of Aboriginal and Torres Strait Islander peoples aged 15 and over who are employed to approximately 60 per cent;
- income equity with other Territorians (which will mean more than doubling the average income of Aboriginal and Torres Strait Islanders); and
- a reduction of Aboriginal and Torres Strait Islander reliance on welfare to a level commensurate with that of other Territorians.

1844. A recent development in the area of Aboriginal and Torres Strait Islander people's employment is the joint funding with the Federal Government of a 12 month project for an employment and development strategy. This strategy will aim to provide employment opportunities for Aboriginal and Torres Strait Islander peoples at various levels within the Northern Territory Public Service and Teaching Service and at furthering the development of Aboriginal and Torres Strait Islander peoples already within the service.

Queensland

1845. There are no specific services for ethnic youth in Queensland. However, attempts are being made by some mainstream services to meet the needs of young people from non-English-speaking backgrounds.

South Australia

Multicultural policies

1846. The Education Department provides programs for children from non-English speaking backgrounds in the following three categories:

- English as a Second Language (ESL);
- Languages Other Than English (LOTE); and
- Supportive School Environment.

1847. ESL programs are provided by the Education Department to students from non-English speaking backgrounds. The New Arrivals Program offers intensive English language programs for newly arrived students from non-English speaking backgrounds (students who have been in Australia for less than 12 months). Senior Secondary students over the age of 18, who wish to complete their secondary education, enrol at an Adult Re-Entry Language Unit. Secondary aged students who have received education in their own country enrol in one of three language centres. Secondary aged students who are illiterate in their first language or whose past education has been severely disrupted, enrol in one of three Literacy Units. Primary aged students are offered intensive English language and literacy instruction at one of six ESL Units.

1848. The Languages Policy of the education Department affirms its commitment to the study of LOTE in schools. Students from non-English speaking backgrounds have the opportunity to maintain and develop their first language through mainstream education or a variety of complementary providers which include the Open Access College, the South Australian Secondary School of Languages and Ethnic Schools.

1849. Currently there are four salaries allocated to 12 schools with high numbers of students from non-English speaking backgrounds to develop a supportive school environment. The programs in these schools are based on recommendations arising out of the Research Report, Supportive School Environment: Cross-cultural Tensions and Students Interaction in School. In addition, cash grants have been allocated to 24 schools with high numbers of students from non-English speaking backgrounds for the acquisition of materials which will assist in the provision of a supportive school environment.

Children in the legal system

1850. The Young Offenders Act 1993 requires effect to be given to the policy that a young offender's sense of racial, ethnic or cultural identity should not be impaired so far as the circumstances of an individual case allow. The Children's Protection Act 1993 requires consideration to be given to the desirability of preserving and enhancing the child's sense of racial, ethnic, religious or cultural identity, and making decisions and orders that are consistent with racial or ethnic traditions or religious or cultural values. The Children's Protection Act 1993 provides that no decision or order can be made under the Act as to where or with whom an Aboriginal or Torres Strait Islander person will reside unless consultation has first been had with a recognised Aboriginal organisation, or a recognised Torres Strait Islander organisation, as the case may be. A court or person making any decision under that Act in relation to Aboriginal or Torres Strait Islander children must have regard to the general principles that an Aboriginal child should be kept with the Aboriginal community and a Torres Strait Islander should be kept within the Torres Strait Islander community. The Adoption of Children Act 1988 also contains an Aboriginal placement principal.

Victoria

Multicultural policies

1851. The Victorian Government has a very strong commitment to the teaching of Languages Other Than English (LOTE) in all Victorian schools and to all Victorian children. A Ministerial Advisory Council on LOTE and English as a second language (ESL) has been established to advise the Minister for Education on all aspects of LOTE and ESL policy and implementation in Victorian schools. A LOTE Strategy Plan has been developed which provides the policy and implementation framework for the teaching and learning of languages in Victorian Government primary and secondary schools and which establishes targets for certain language programs for all students and for at least 25 per cent of years 11-12 students by the year 2000. The Victorian School of Languages provides language programs outside of regular school hours in a wide range of languages throughout Victoria. An ESL Strategy plan is currently being developed to address the needs of Non-English Speaking Background (NESB) students for support with the English language. Financial support is provided to after-hours ethnic schools established by ethnic communities to ensure the maintenance of language, culture and in some cases religion. Bilingual multicultural aides are employed in primary and secondary schools to provide support for NESB children and their families.

1852. The Ethnic Policies and Programs Analysis (1990) identifies the following areas as priorities for future action:

- cross-cultural training to improve the understanding and skill of policy and program staff in services for children and their families or carers;
- development of a procedural policy on the use of interpreters by program staff and professionals working with children from non-English speaking backgrounds and their families or carers;
- increased employment of appropriately trained bilingual people as program staff;
- improved collection of ethnicity data by agencies;
- development of principles and performance indicators directed to improving the provision of information to children from non-English speaking backgrounds and families and ethnic communities; and
- documentation of good practice, and staff training, directed to increasing consultation with ethnic communities in the development and management of services for children.

Indigenous policies

1853. The Victorian Government recognises that many Aboriginal people are severely disadvantaged in respect of access to affordable housing, employment, education and appropriate health services. The Victorian Government also recognises that levels of disadvantage suffered by Aboriginal people directly affect their capacity to enjoy the same rights and freedoms as other Victorians. The Government acknowledges the rights of Aboriginal children to enjoy their own culture and is committed to providing service which seeks to restore and safeguard their communities, culture and cultural heritage.

1854. As a consequence of a review of the Victorian Tripartite Council on Koori Health, the Department of Health and Community Services, in conjunction with the Victorian Aboriginal Community Controlled Health Organisation will develop and implement a reform strategy for Aboriginal Health. The restructure of the consultative body will provide a mechanism for further implementation of the National Aboriginal Health Strategy and the recommendations from the Royal Commission into Aboriginal Deaths in Custody. This reform will embrace a strategy based on the principles of self-management and self-determination, empowering Aboriginal people and their organisations to act on their own behalf in improving the health of their community.

1855. The Victorian Government and the Victorian Aboriginal Education Association have developed a Strategy Plan to implement the National Aboriginal and Torres Strait Islander Education Policy. The Plan aims to help Aboriginal people to determine their own needs and manage their own services, to have more Aboriginal students stay at school to year 12, and to involve Aboriginal parents in their children's education.

Children in the legal system

1856. Specific provisions of the Children and Young Persons Act 1989 respect cultural differences. The Act provides the right to an interpreter for children involved in court proceedings.

Western Australia

Multicultural and indigenous policies

1857. In recognition of the diversity of the Western Australian population, the Department for Community Development has a Multicultural Welfare Policy. This policy is based on the social justice principles of equity, access and participation. Its implementation emphasises the Department's commitment to ensuring that its policies, programs and services are appropriate, relevant and accessible to Western Australians from different cultural backgrounds.

1858. The implementation strategy for this policy has nine goals:

- to ensure that legislation and planning in the Department reflect the diversity of the Western Australian population it serves;
- to ensure that the Department's Human Resources Policies reflect and enhance the implementation of the Multicultural Welfare Policy;
- to train staff in the development of skills so that they can provide effective and appropriate services to Western Australian from different cultural backgrounds;
- to develop office procedures that are appropriate and relevant to the population of Western Australia;
- to effectively inform ethnic communities about the Department's programs and services;
- to improve the access of ethnic minorities to the Department's funding programs;
- to develop strategies for collecting ethnicity related data; and

- to ensure consultation with ethnic minority groups in policy, program and service planning and development.

1859. The Department has appointed a Senior Policy Officer Ethnic Services to provide advice and consultative services on ethnic minority issues and to guide the implementation of the Multicultural Welfare Policy.

1860. The majority of the Department's clients are Aboriginal, which reflects the effects of long-term discrimination and social disadvantage. To assist this situation the Department has policy of promoting Aboriginal self-determination and a comprehensive Aboriginal Services Policy and Implementation Plan.

1861. Strategies include the employment of increased numbers of Aboriginal staff at all levels within the Department, funding of a wide variety of Aboriginal initiated projects and staff sensitisation to Aboriginal cultural issues. Similar staff training on issues affecting other ethnic minorities is also conducted.

1862. Since 1985 the Department has endeavoured to foster a number of strategies and policies aimed at addressing justice, access and equity for Aboriginal people. These are as follows:

- Adviser Aboriginal Services: A position has been created within the Department for an Aboriginal person whose role is to advise the Minister, Director General, Executive and other Departmental personnel on Aboriginal issues.

- Aboriginal Child Placement Principles: The Departmental Executive has endorsed a set of principles related to the out of home placement of Aboriginal children. The main focus of the principles is culturally consistent placements. Placement with non-Aboriginal caregivers is the last option and must be endorsed by the Director General.

- Aboriginal Employment Strategy: The Department has an Affirmative Employment Strategy for Aboriginal people. The aim is to increase their presence within the Department as service providers and to provide a culturally appropriate service to clients.

- Co-ordinator Aboriginal Development: To monitor the Aboriginal employment strategy and provide support and assistance to new Aboriginal employees a position has been created for an Aboriginal person as Co-ordinator Aboriginal Employment.

- Enhancing child welfare in remote Aboriginal communities: To respond better to the child welfare needs in remote Aboriginal communities, the Department commissioned a researcher to consult with such communities to ascertain how child welfare services to remote Aboriginal communities could be improved and become more culturally appropriate.

- Aboriginal Child Protection Officer: In recognition of the high level of representation of Aboriginal people in the north west of Western Australia, the Department has appointed two Aboriginal Children's Protection officers.

- Family Tracing Service: As a bicentennial project, the Department initiated a service that enables members of the Aboriginal community to become informed of their family links, many of which were severed as a result of past Government policies and practices.

- Aboriginal Participation Project: To ascertain the views of the Aboriginal community on the issue of juvenile offending, the Department engaged the services of approximately 20 tertiary students to consult with Aboriginal people. Their responses have been analysed and incorporated in a report which will set future directions for the Department.

1863. When children are adopted from overseas, the adoptive parents must share a similar ethnic and/or cultural background with the child, or if they do not, they need to demonstrate that they have the ability to accept and acknowledge the child's ethnic and cultural background and foster links with that background in the child's upbringing.

1864. The Department funds and otherwise supports a wide range of community development programs that seek to empower Aboriginal communities to deal with issues, such as child protection and juvenile offending, themselves. These projects invariably promote the cultural identity of Aboriginal children.

Children in the Juvenile Justice System

1865. The Ministry of Justice has developed an Aboriginal Plan which identifies strategies to improve Aboriginal people's access to justice.

1866. The aim of the Aboriginal Plan is to ensure the policy and practices of the Ministry of Justice provide:

- an entitlement of Aboriginal people to equity of access to justice services; and
- a responsive approach to meeting the needs of Aboriginal people, including the involvement of Aboriginal people in the development and delivery of justice services.

1867. The Aboriginal Plan has as one of its priority objectives to contribute positively to reducing the over-representation of Aboriginal juveniles in detention and sets out a series of strategies to that end.

1868. Both juvenile detainees and adult prisoners have access to an Aboriginal Visitors Scheme which covers prisons, police lock-ups and juvenile detention centres in the Perth Metropolitan area and throughout the State. Aboriginal Visitors work to reduce the likelihood of Aboriginal deaths in custody by providing support to detainees and prisoners.

1869. The Juvenile Justice Division of the Ministry of Justice provides a range of educational, vocational programs to juvenile detainees. These programs include

Aboriginal cultural programs and other programs tailored for Aboriginal young people.

1870. The Ministry of Justice consults with Aboriginal community groups in the development and implementation of its programs. For example, the local Aboriginal community has been consulted throughout planning for the pilot work camp, Camp Kurli Murri.

ANNEXURE 1

TABLE F1

Deaths at ages 1 to 14 years: main causes of death by sex, 1991-1993.

# All rates are for the 1-14 year age group, by year of registration, per 100,000 of estimated resident population at 30 June.

Cause	Sex	1991	1992	1993
M.V.T.A	Males	5	5	4
	Females	2	3	3
Other Acc	Males	5	5	7
	Females	4	3	3
Cancer	Males	3	4	4
	Females	3	3	4
Drowning	Males	3	3	3
	Females	1	2	1

M.V.T.A = Motor Vehicle Traffic Accidents.
Other Acc = Accidents, Poisoning and Violence excluding Motor Vehicle Traffic Accidents and Accidental Drowning and Submersion.
Cancer = Malignant neoplasms.
Drowning = Accidental drowning and submersion.

Source: ABS: Australian Social Trends 1994.

TABLE F2

Average number of children born to women of child bearing age

State	Aboriginal population	Total population
	no.	no.
NSW	3.0	1.9
VIC	3.0	1.8
QLD	3.2	1.9
SA	3.0	1.7
WA	3.6	1.9
TAS	2.6	1.9
NT	3.4	2.3
ACT	2.6	1.8
Total	**3.1**	**1.9**

Source: Birth Registrations; Census of Population and Housing; Dugbaza (1994)

TABLE F3

Infant mortality rates, 1991 - 1993

Year	Males	Females
1991	7.9	6.3
1992	7.9	6.0
1993	6.9	5.3

Deaths of children aged under 1 year per 1,000 live births.

Source: ABS: Australian Social Trends 1994.

TABLE F4

Infant mortality rates per 1,000 live births, Aboriginal and total Australian populations, 1973 to 1991

	Aboriginals				
Period	Qld(a)	WA	SA	NT	Total Australia
1973 to 1975	78.8	-	-	61.7	15.7
1976 to 1978	56.1	-	-	58.4	12.8
1979 to 1981	27.4	24.7	-	36.8	10.7
1982 to 1984	28.6	24.8	-	32.9	9.7
1985 to 1987	19.3	21.6	20.9	34.9	9.1
1988 to 1990	15.6	22.3	23.2	31.2	8.3
1991	na	(b)19.2	24.9	26.9	7.1

(a) The figures relate to Aboriginal people living in the Queensland communities (Hogg & Thomson 1992).

(b) Estimate provided by the Department of Health, Western Australia.

Sources: Northern Territory Department of Health and Community Services 1992; Gee 1992; South Australian Health Commission 1993 in Australian Institute of Health and Welfare, Australia's Health 1994; the fourth biennial health report of the Australian Institute of Health and Welfare, AGPS, Canberra, 1994.

TABLE F5

Children who experienced one or more illness conditions during the two weeks before interview: seven most frequently reported illness conditions, 1989-90 (a)

Illness condition(s) reported	Per cent of population aged 0 to 4 years
Otitis media	3.7
Asthma	4.0
Cough or sore throat	4.2
Injuries	7.0
Dental problems	10.2
Eczema, dermatitis	15.3
Common cold	22.7

Illness condition(s) reported	Per cent of population aged 5 to 14 years
Cough or sore throat	3.7
Eczema, dermatitis	4.3
Dental problems	6.2
Headache (b)	6.8
Asthma	8.3
Injuries	9.0
Common cold	12.7

(a) Each child may have experienced more than one illness condition and therefore may appear in a number of categories within each age group, but only once within each category.
(b) Headache due to unspecified or trivial cause (rather than stress/tension).

Source: Australian Health Survey.

TABLE F6

Six year olds fully immunised

Disease	1983	1989-90
	%	%
Diptheria/tetanus	92.8	93.1
Whooping cough	93.1	85.1
Poliomyelitis	58.6	79.5
Measles	64.8	91.5
All above conditions	*54.7*	*71.1*
Mumps	13.7	87.2
All conditions	**6.2**	**68.7**

Source: Children's Immunisation Survey (1983); National Health Survey (1989-90).

TABLE F7

All Aboriginal perons: whether have experienced a recent illness and type of condition (a) by age and sex Australia, 1994 ('000)

	Age group (years)		
	0-4	5-14	15-24
Have experienced a recent illness condition			
Infectious and parasitic diseases	1.0	1.5	0.7
Neoplasms	**0.0	**0.0	**0.0
Endocrine, nutritional and metabolic diseases and immunity disorders	**0.2	**0.4	**0.3
Diseases of blood and blood forming organs	**0.1	**0.3	**0.4
Mental disorders	**0.1	**0.2	0.9
Diseases of the nervous system and sense organs	2.6	3.6	1.4
Diseases of the circulatory system	**0.0	**0.3	**0.4
Diseases of the respiratory system	9.4	10.4	8.0
Diseases of the digestive system	2.4	1.6	1.0
Diseases of the genitourinary system	**0.3	0.6	0.6
Complications of pregnancy, childbirth and the puerperium	**0.0	**0.0	**0.2
Diseases of the skin and subcutanious tissue	3.0	2.8	1.7
Diseases of the musculoskeletal system and connective tissue	**0.2	1.3	1.5
Congential anomalies	**0.1	**0.1	**0.1
Symptoms, signs and ill-defined conditions	1.4	4.0	5.1
Injury and poisoning	1.5	3.2	3.9
Disability n.e.c.	**0.2	**0.1	**0.1
Unspecified	0.9	1.1	1.3
Total persons who experienced recent illness (b)	**18.7**	**24.9**	**21.4**
Total persons who did not experience recent illness	**25.8**	**49.2**	**41.0**
Total	**44.5**	**74.1**	**62.5**

(a) Condition groups based on chapter headings of the International Classification of Diseases, Ninth Revision (ICD9).
(b) Columns do not add to 'Total persons who experienced recent illness' because more than one illness may have been reported.
** Subject to very high sampling variability.

Source: Aboriginal and Torres Strait Islander Survey 1994.

TABLE F8

All Aboriginal persons: type of specified current condition, whether long term by age by sex Australia, 1994 ('000)

Type of condition	*Less than 15*		*15 - 24*	
	Males	*Females*	*Males*	*Females*
Asthma				
Long term	10.2	7.5	2.7	4.4
All sufferers	11.4	8.7	3.0	5.1
Diabetes				
Long term	**0.1	**0.0	*0.4	*0.2
All sufferers	*0.2	*0.2	*0.4	*0.3
Heart problems				
Long term	1.2	1.0	0.8	0.9
All sufferers	1.3	1.1	0.9	1.0
Chest problems				
Long term	2.4	2.0	1.3	0.7
All sufferers	3.2	2.5	1.7	1.0
Skin problems				
Long term	3.5	3.5	1.5	1.7
All sufferers	5.0	5.0	2.0	2.2
High blood pressure				
Long term	**0.0	**0.1	0.6	0.7
All sufferers	**0.0	**0.1	0.7	1.2
Ear or hearing problems				
Long term	5.5	4.2	1.9	2.3
All sufferers	6.6	5.6	2.1	2.6
Eye problems(a)				
Long term	1.0	*0.5	0.5	*0.3
All sufferers	1.3	1.0	0.7	*0.4
Kidney problems				
Long term	0.6	0.8	*0.4	1.1
All sufferers	0.7	1.0	*0.5	1.4
Total Persons(b)	**60.8**	**57.8**	**31.9**	**30.5**

(a) Excludes eye problems which can be corrected by glasses. (b) Includes persons who did not have a specified current condition.

* Subject to high sampling variability.

** Subject to very high sampling variability.

Source: Aboriginal and Torres Strait Islander Survey 1994.

TABLE F9

Age-specific hospital admission rates by sex, Aboriginals and non-Aboriginals,(a) 1991-92 (per 1,000 persons)

	Males			Females		
Age group (years)	Aboriginals	Non-Aboriginals	Rate ratio	Aboriginals	Non-Aboriginals	Rate ratio
0-4	514	353	1.6	413	245	1.7
5-14	99	102	1.0	93	78	1.2
15-24	166	118	1.4	362	223	1.6
25-34	290	133	2.2	388	346	1.1
35-44	370	153	2.4	365	236	1.5
45-54	470	223	2.1	408	259	1.6
55-64	645	352	1.8	674	315	2.1
65-74	714	532	1.3	895	423	2.1
75 and over	1,139	741	1.5	881	600	1.4
All ages	371	218	(b)1.7	428	272	(b)1.6

(a) Rates for both Aboriginal and non-Aboriginal population represent combined data for NSW and SA.

(b) Age-standardised rate ratios.

Source: Australian Institute of Health and Welfare, Australia's Health 1994; the fourth biennial health report of the Australian Institute of Health and Welfare, AGPS, Canberra, 1994.

TABLE F10

Suicide death rates(a) by age and sex

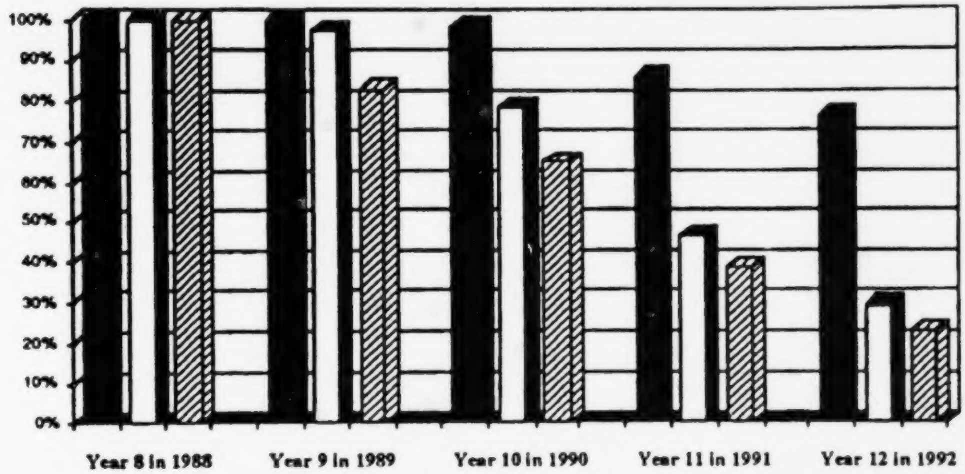
5 year mid-year	15-24 years	25-34 years	35-44 years	45-54 years	55-64 years	65-74 years	75 years and over	Total
	rate	rate	rate	rate	rate	rate	rate	rate
Males								
1975	14.8	18.3	23.1	27.0	23.1	30.2	30.4	20.9
1980	18.0	22.7	22.6	23.9	23.9	24.3	30.6	27.5
1985	21.4	26.4	22.7	23.2	24.9	26.9	35.7	24.3
1990	26.5	29.5	25.8	24.3	23.2	26.2	35.1	26.7
Females								
1975	4.6	7.2	10.8	13.9	13.4	10.0	7.0	9.2
1980	4.5	6.7	8.6	11.7	10.2	9.0	6.7	8.0
1985	4.8	6.0	7.0	9.7	8.8	7.9	7.4	7.0
1990	4.9	7.1	6.9	7.3	8.1	7.7	8.4	6.9
Persons								
1975	9.8	12.9	17.1	20.6	18.1	19.3	15.3	15.2
1980	11.4	14.9	16.0	18.0	17.0	16.1	15.4	15.1
1985	13.3	16.3	15.0	16.6	16.8	16.6	17.7	15.6
1990	15.9	18.4	16.5	16.0	15.7	16.2	18.3	16.7

(a) Rates per 100,000 population in the same age and sex groups.

Source: ABS: Australian Social Trends 1994.

TABLE G1

Progression through Secondary School – the 1992 Year 12 Cohort *



	Year 8	Year 9	Year 10	Year 11	Year 12
■ Other Australian Students	100.0%	100.0%	98.3%	85.8%	76.2%
□ Aboriginal and Torres Strait Islander Females	100.0%	97.1%	78.1%	46.2%	29.0%
▨ Aboriginal and Torres Strait Islander Males	100.0%	82.7%	64.7%	38.2%	22.5%

* Data on Students in Queensland schools are excluded
Source: National Schools Statistics Collections, 1992

TABLE G2

Commonwealth - Females in higher education by type of course and field of study 1983 and 1993

Type of course/field of study	Female enrolments		Females as proportion of total enrolements	
	1983 ('000)	1993	1983 (per cent)	1993
Field of study				
Agriculture / forestry	1,710	3,884	27.9	35.3
Architecture / building	1,610	4,189	20.7	33.9
Arts / humanities / social sciences	54,890	86,476	63.7	67.7
Business / administration / economics	18,539	52,069	29.5	43.2
Education	48,945	55,643	65.9	72.7
Engineering / surveying	1,280	5,736	4.6	12.5
Health / medicine	10,496	52,741	53.5	74.5
Dentistry				
Law / legal studies	4,168	9,332	40.1	47.8
Science / applied science	17,237	33,631	35.5	40.2
Veterinary science	639	961	43.6	55.9
Non Award	1,746	2,969	47.2	49.7
Total	161,260	307,631	46.3	53.4

Source: DEET's Higher Education Division's Time Series.

TABLE G3

Higher education students 1949-1992 selected characteristics

		Proportion				
Year	**Total Students**	**Full-time**	**Part-time**	**External**	**Per cent Female**	**Growth Rate from Previous Year**
1950	30,630	62.7	28.1	9.2	21.6	-3.5
1960	53,633	58.7	31.1	10.2	22.8	13.0
1970	116,778	63.2	30.0	6.8	29.9	6.5
1980	329,523	54.5	34.7	10.8	45.3	2.3
1990	485,075	61.7	27.4	10.9	52.7	10.0
1993	575,617	59.7	29.2	11.1	53.4	2.9

Source: DEET's Higher Education Division's Time Series.

TABLE G4

Overseas aid disbursements ($ million) by function within the education and training sector 1990/91 to 1993/94

Function	1990/91	1991/92	1992/93	1993/94
Primary and Secondary Education	18.8	15.9	15.5	18.3
Tertiary Education	143.6	161.5	156.8	174.5
Vocational and Technical Training	12.9	23.5	32.4	18.6
Other	21.4	27.1	26.7	22.1
Total	196.8	228.1	231.3	233.4

Source: Ausaid data.

TABLE G5

Eight largest recipients of overseas aid in the form of education assistance 1993/94($m)

Country	*Student Numbers*	*Student Costs*	*Other Education Costs*	*Total Costs*
Indonesia	997	27.4	25.6	53
Philippines	309	10.6	7.1	17.7
Malaysia	806	15.1	0.5	15.6
Thailand	474	12.2	2.1	14.3
Vietnam	335	7.2	1.6	8.8
Sri Lanka	179	5.5	0	5.5
PNG	367	9.8	12.4	22.1
Fiji	328	9.9	1.9	11.8
Other	2004	56.4	28.3	85.3
TOTAL	5799	154	79.5	233.5

Source: Ausaid data.

TABLE G6

Apparent retention rates of secondary school students to year 12
1989 to 1994

	States and Territories								*Australia*		
Year	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*	*Males*	*Females*	*Persons*
1989	54.4	60.5	69.7	66.7	61.8	39.7	42.7	85.6	55.5	63.2	60.3
1990	56.8	65.4	74.0	72.1	64.2	44.7	47.7	86.9	58.3	69.9	64.0
1991	61.4	75.7	79.6	83.5	71.1	52.6	57.5	95.6	66.1	76.7	71.3
1992	68.5	81.1	85.0	92.7	72.8	60.2	56.7	97.2	72.5	82.0	77.1
1993	70.6	79.1	82.9	86.3	75.6	60.6	47.5	94.2	71.9	81.4	76.6
1994	70.4	77.3	78.8	81.7	73.4	58.3	42.9	93.3	69.6	79.9	74.6

Source: DEET Schools, Australia 1994.

TABLE H1

All persons in juvenile corrective institutions by age as at 31 March 1993

AGE	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUST*
10	..	..	..	..	n/a	..	..	..	..
11	1	..	..	1	n/a	1	..	..	3
12	4	..	2	..	n/a	..	1	..	7
13	5	4	6	6	n/a	..	1	..	22
14	27	2	9	10	n/a	3	1	..	52
15	38	15	22	15	n/a	6	8	1	105
16	89	21	46	35	n/a	4	8	2	205
17	106	27	12	46	n/a	2	2	2	197
Total 10-17	270	69	97	113	n/a	16	21	5	591
18+	96	53	1	4	n/a	1	..	..	155
Total	366	122	98	117	n/a	17	21	5	746

Note: .. = zero value.
*South Australia data not included.

Source: National Trends for Persons in Juvenile Corrective Institutions and Adult Prisons 1981-1992, Australian Institute of Criminology, Canberra 1994.

TABLE H2

Aboriginal and Torres Strait Islander persons in juvenile corrective institutions by age, as at 31 March 1993

Age	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*NT*	*ACT*	*AUST*
10	-	-	-	-	n.a.	-	-	-	n.a.
11	1	-	-	-	n.a.	-	-	-	n.a.
12	2	-	-	-	n.a.	-	-	-	n.a.
13	1	-	6	5	n.a.	-	-	-	n.a.
14	10	2	5	8	n.a.	-	1	-	n.a.
15	15	1	11	12	n.a.	-	5	-	n.a.
16	26	5	21	20	n.a.	-	6	-	n.a.
17	21	4	5	29	n.a.	-	2	-	n.a.
10-17	76	12	48	74	n.a.	-	14	-	n.a.
18+	20	3	-	4	n.a.	-	-	-	n.a.
TOTAL	96	15	48	78	n.a.	-	14	-	n.a

Note: Tasmania and the Australian Capital Territory did not have Aboriginal/Torres Strait Islander juveniles detained on 31 March 1993.

Source: Facts and Figures: Persons in Juvenile Corrective Institutions No. 62, March 1993, Australian Institute of Criminology, 1993.

TABLE H3

Persons aged 10 to 17 years in juvenile corrective institutions by detention status and sex, as at 31 March 1993

Detention Status		NSW	VIC	QLD	WA	SA	TAS	NT	ACT
Not Awaiting Hearing[1]	M	159	53	50	57	n/a	11	18	4
	F	10	0	5	5	n/a	0	0	0
Awaiting Hearing[2]	M	93	15	40	46	n/a	5	3	1
	F	8	1	2	5	n/a	0	0	0
Total	M	252	68	90	103	n/a	16	21	5
	F	18	1	7	10	n/a	0	0	0
Rate[3]	M	72.8	26.2	47.9	101.0	n/a	55.5	189.4	26.7
	F	5.4	0.4	3.9	10.4	n/a	0.0	0.0	0.0
Population ('000)[4]	M	346.0	259.9	187.8	101.9	81.8	28.8	11.1	18.7
	F	330.5	246.5	177.8	96.5	77.0	27.3	9.7	17.8

1. Not awaiting hearing, outcome or penalty (sentenced).
2. Awaiting hearing, outcome or penalty (remand).
3. Per 100,000 relevant gender population.
4. Population figures are based on estimates as at 30 June 1992 (subject to revision).

Source: Facts and Figures: Persons in Juvenile Corrective institutions No. 62, March 1993, Australians Institute of Criminology, Canberra, 1993.

TABLE H4

Persons under 20 years in juvenile institutions and adult prisons by jurisdiction and sex, on 30 June 1992

Description	Age	Sex	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUST
Juvenile Corrective Institutions	<18yrs	Male	250	47	71	84	50	5	25	9	541
		Female	12	5	3	9	3	0	3	1	36
		Total	**262**	**52**	**74**	**93**	**53**	**5**	**28**	**10**	**577**
Adult Prisons	<18yrs	Male	0	2	20	7	3	6	7	0	45
		Female	0	1	1	0	0	0	0	0	2
		Total	**0**	**3**	**21**	**7**	**3**	**6**	**7**	**0**	**47**
Juvenile Corrective Institutions	18 yrs	Male	75	30	1	2	1	2	0	0	111
		Female	3	0	0	0	0	0	0	0	3
		Total	**78**	**30**	**1**	**2**	**1**	**2**	**0**	**0**	**114**
Adult Prisons	18 yrs	Male	98	31	81	58	30	12	8	3	321
		Female	6	0	3	6	1	0	0	0	16
		Total	**104**	**31**	**84**	**64**	**31**	**12**	**8**	**3**	**337**
Juvenile Corrective Institutions	19 yrs	Male	28	46	0	0	0	0	0	0	74
		Female	2	0	0	0	0	0	0	0	2
		Total	**30**	**46**	**0**	**0**	**0**	**0**	**0**	**0**	**76**
Adult Prisons	19 yrs	Male	242	59	101	111	46	13	23	2	597
		Female	7	5	0	5	4	0	2	0	23
		Total	**249**	**64**	**101**	**116**	**50**	**13**	**25**	**2**	**620**

Source: National Trends for Persons in Juvenile Corrective Institutions and Adult Prisons 1981-1992, Australian Institute of Criminology, Canberra 1994.

N=Number. R=Rate per 100 000 age and gender specific population

Juvenile Institutions data have been extracted from Table 3 (Non-offenders have not been included) Juveniles in Corrective Institutions series.

TABLE H5

Level of over-representation
Aboriginal and Torres Strait Islander persons to other persons, aged 10 to 17 years in juvenile corrective institutions, at 31 March 1993

Age	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*NT*	*ACT*	*AUST*
10-14	31.2	86.6	47.2	79.0	n.a.	-	1.0	-	n.a.
15-16	26.7	37.0	26.4	49.4	n.a.	-	4.4	-	n.a.
17	14.1	31.3	20.4	47.6	n.a.	-	-	-	n.a.
10-17	*20.8*	*37.2*	*26.5*	*48.4*	*n.a.*	-	*4.0*	-	*n.a.*
18+	15.1	11.2	-	-	n.a.	-	-	-	n.a.

Note: This data shows the extent of over-representation of Aboriginal and Torres Strait Islander juveniles in correctional institutions by comparing Aboriginal and Torres Strait Islander rate of detention with that of non-Aboriginal and Torres Strait Islander juveniles. For example, for New South Wales juveniles aged 10-17 years, Aboriginal and Torres Strait Islander juveniles are 20.8 times more likely to be in juvenile correctional institutions than non-Aboriginal and Torres Strait Islander juveniles.

Source: Facts and Figures: Persons in Juvenile Corrective Institutions No. 62, March 1993, Australian Institute of Criminology, 1993.

TABLE H6

Western Australia
- sentences handed down by courts to juveniles January 1991- January 1992

Length of sentence	Number of juveniles received
Less than 1 month	10
1 month to less than 3 months	22
3 months to less than 6 months	10
6 months to less than 12 months	1
1 year to less than 2 years	6
2 years to less than 5 years	2
More than 5 years	1

Source: Western Australian Department of Corrective Services

TABLE H7

Offence groups - by appearance type and outcome
1/7/93 to 30/6/94

OFFENCE GROUPING	CHILDREN'S COURT																				PANEL				
	Probation	Conditional Release	Fined	Community Service	Detention	Dismissed S34 CWA	Dismissed - GBB	Dismissed S24 CWA*	Adult Probation CSO	Community Service CPI*	Adult Probation	Prison	Adult CSO*	Parental Bond	Sine Die	MDL Disqualification	Licence Grant	Dismissed Police Act	Educational Probation	TOTAL COURT	Dismissed S74 CWA	Suspended	Supervision	TOTAL PANEL	TOTAL COURT & PANEL
THEFT	1,870	1,660	263	1,042	1,129	572	476	265	238	393	341	234	43	32	6					8,564	1,690	73	23	1,786	10,350
TRAFFIC	271	374	1,445	381	261	129	330	201	33	83	45	64	20	12	14	4	3			3,670	721	18	1	740	4,410
JUSTICE	413	652	223	129	203	332	142	61	21	71	49	44	8	3	3	1				2,355	132			132	2,487
PROPERTY	349	160	77	243	108	116	93	47	432	56	21	4	10	3	1					1,720	221	15		236	1,956
GOOD ORDER	160	99	301	155	91	320	256	121	22	63	19	10	5	2	7			1		1,632	203		1	204	1,836
DRUGS	134	51	216	79	39	222	120	56	15	33	22	7	2	3					1	1,000	282	10		292	1,292
ASSAULT	173	143	57	75	78	30	84	19	13	23	30	26	6	9	4					770	101	3	1	105	875
FRAUD	83	20	14	63	29	11	55	7	2	10	34	9								337	46	1	3	50	387
OTHER	10	13	194	37	17	7	18	15	2	7		4			9					333	20	2		22	355
ROBBERY	31	39		5	56	1	4		9		7	20	1		2					175	2			2	177
SEXUAL	44	10	2	2	6	9	2	6	19		17	3								120	24	15	1	40	160
LIQUOR	6	6	75	9	3	8	9	8		2	2		1		2					131	24			24	155
EXPLOSIVES & FIREARMS	13	10	3		8	6	2	1												43	4			4	47
HOMICIDE	1	3	1		1						2	6								14				0	14
ALL CHARGES	3,558	3,240	2,871	2,220	2,029	1,763	1,591	807	806	741	589	431	96	64	48	5	3	1	1	20,864	3,470	137	30	3,637	24,501

ANNEXURE 2

Legislation

Aboriginal Education (Supplementary Assistance) Act 1989 (Fed)
Acts Amendment (Evidence of Children and Others) Act 1992 (WA)
Adoption Act 1984 (Vic)
Adoption Act 1988 (SA)
Adoption Act 1992 (ACT)
Adoption Bill 1980 (Tas)
Adoption of Children Act 1964 (NT)
Adoption of Children Act 1964 (Qld)
Adoption of Children Act 1965 (ACT)
Adoption of Children Act 1965 (NSW)
Adoption of Children Act 1968 (Tas)
Adoption of Children Act 1980 (NT)
Adoption of Children Act 1986 (WA)
Adoption of Children Act 1988 (SA)
Adoption of Children Act 1988 (Tas)
Adoption of Information Act 1990 (NSW)
Alcoholics and Drug Dependent Persons Act 1981 (Vic)
Anti-Discrimination Act 1977 (NSW)
Anti-Discrimination Act 1991 (Qld)
Anti-Discrimination Act 1992 (NT)
Australian Citizenship Act 1948 (Fed)
Australian Postal Corporation Act 1989 (Fed)
Austudy Regulations (Fed)
Bail Act 1977 (Vic)
Bail Act 1978 (NSW)
Bail Act 1979 (NSW)
Bail Act 1982 (Tas)
Bail Act 1982 (WA)
Bail Act 1985 (SA)
Broadcasting Services Act 1992
Child Care Act 1991 (Qld)
Child Protection Act 1974 (Tas)
Child Protection Amendment Act 1986 (Tas)
Child Support (Registration and Collection) Act 1988 (Fed)
Child Support Assessment Act 1989 (Fed)
Child Welfare Act 1947 (WA)
Child Welfare Act 1947 (Tas)
Child Welfare Act 1947 (WA)
Child Welfare Act 1960 (Tas)
Child Welfare Act 1983 (NT)
Children (Care and Protection) (Child Employment) Amendment Act 1992 (NSW)
Children (Care and Protection) Act 1987 (NSW)
Children (Criminal Proceedings) Act 1987 (NSW)
Children (Detention Centres) Act 1987 (NSW)
Children (Detention Centres) Regulation 1988 (NSW)
Children Act 1989 (UK)
Children and Young Persons Act 1989 (Vic)
Children and Young Persons Regulation 1991 (Vic)
Children (Parental Responsibility) Act 1994 (NSW)
Children's Court Act 1987 (NSW)
Children's Court Act 1992 (Qld)

Children's Court of Western Australia Act 1988 (WA)
Children's Protection Act 1993 (SA)
Children's Protection and Young Offenders Act 1979 (SA)
Children's Services Act 1965 (Qld)
Children's Services Act 1985 (SA)
Children's Services Act 1986 (ACT)
Children's Services Centres Regulations 1988 (Vic)
Children's Services Regulations 1988 (Vic)
Classification of Films and Publication Act 1990 (Vic)
Classification of Publication Act 1984 (Tas)
Classification of Publications Act 1985 (NT)
Community Services (Complaints, Appeals and Monitoring) Act 1993 (NSW)
Community Services Act 1970 (Vic)
Community Services Act 1972 (WA)
Community Welfare Act 1973 (SA)
Community Welfare Act 1983 (NT)
Consent to Medical and Dental Procedures Act 1985 (SA)
Constitution Act 1934 (Tas)
Correctional Services Act 1982 (SA)
Corrections (Remissions) Act 1991 (Vic)
Corrections Act 1986 (Vic)
Corrective Services Act 1988 (Qld)
Crimes (Amendment) Act 1955 (NSW)
Crimes (Capital Offences) Act 1975 (Vic)
Crimes (Child Sex Tourism) Amendment Act 1994 (Fed)
Crimes (Child Victim Evidence) Amendment Act 1990 (NSW)
Crimes (Custody and Investigation) Act 1988 (Vic)
Crimes (Death Penalty Abolition) Amendment Act 1985 (NSW)
Crimes (Domestic Violence) Amendment Act 1983 (NSW)
Crimes (Family Violence (Amendment) Act 1990 (Vic)
Crimes (Family Violence) Act 1987 (Vic)
Crimes (Fingerprint) Act 1994 (Vic)
Crimes (Life Sentences) Amendment Act 1989 (NSW)
Crimes (Life Sentences) Amendment Act 1990 (NSW)
Crimes (Search Warrants and Powers of Arrest) Amendment Act 1994 (Fed)
Crimes Act 1900 (ACT)
Crimes Act 1902 (NSW)
Crimes Act 1900 (Fed)
Crimes Act 1958
Crimes Act 1958 (Vic)
Criminal Code Act 1968 (Tas)
Criminal Code Act 1991 (NT)
Criminal Code Act Compilation Act 1913 (WA)
Criminal Code Amendment Act 1922 (Qld)
Criminal Code and Video Classification Act (WA)
Criminal Law Consolidation Act 1935 (SA)
Criminal Law Consolidation Act 1936 (SA)
Criminal Records Act 1991 (NSW)
De Facto Relationships Act 1991 (NT)
Death Penalty Abolition Act 1973 (ACT)
Death Penalty Abolition Act 1973 (Fed)
Death Penalty Abolition Act 1973 (NT)
Disability Discrimination Act 1992 (Fed)

Disability Services Act 1986 (Fed)
Disability Services Act 1991 (ACT)
Disability Services Act 1992 (Qld)
Disability Services Act 1993 (NSW)
Disabled Person's Services Act 1986 (Vic)
Discrimination Act 1991 (ACT)
Domestic Violence (Family Protection) Act 1989 (Qld)
Domestic Violence Act 1986 (ACT)
Domestic Violence Act 1994 (NT)
Domestic Violence Amendment Bill 1994 (NT)
Drugs Misuse Act 1986 (Qld)
Drugs of Dependence Act 1989 (ACT)
Drugs Poisons and Controlled Substances Act 1981 (Vic)
Education (General Provisions) Act 1989 (NSW)
Education (General Provisions) Act 1989 (Qld)
Education Act 1932 (Tas)
Education Act 1937 (ACT)
Education Act 1958 (Vic)
Education Act 1964-1984 (NSW)
Education Act 1979 (NT)
Education Act 1981 (WA)
Education Act 1985 (NT)
Education Reform Act 1990 (NSW)
Emergency Medical Operation Act 1973 (NT)
Equal Opportunity Act 1984 (SA)
Equal Opportunity Act 1984 (Vic)
Equal Opportunity Act 1984 (WA)
Ethnic Affairs Commission Act 1979 (NSW)
Ethnic Affairs Commission Act 1982 (Vic)
Evidence (Closed Circuit Television) Act 1991 (ACT)
Evidence Act 1971 (ACT)
Evidence Act 1910 (Tas)
Evidence Act 1906 (WA)
Evidence Act 1980 (NT)
Factories, Shops and Industries Act 1962 (NSW)
Family Court Act 1975 (WA)
Family Law Act 1975 (Fed)
Family Law Act 1975 (NSW)
Family Law Reform Bill 1994 (Fed)
Family Provision Act 1980 (NT)
Freedom of Information Act 1982 (Fed)
Freedom of Information Act 1983 (Vic)
Freedom of Information Act 1991 (Tas)
Guardianship Act 1987 (NSW)
Guardianship of Infants Act 1980 (NT)
Health Act 1937 (Qld)
Health Act 1958 (Vic)
Health Insurance Act 1973 (Fed)
Health Services Act 1988 (Vic)
Housing Assistance Act 1987 (ACT)
Human Rights and Equal Opportunity Commission Act (Fed)
Human Tissue Act 1982 (Vic)
Immigration (Guardianship of Children) Act 1946 (Fed)

Immigration (Guardianship of Children) Act 1946 (WA)
Indecent Publications and Articles Act 1902 (WA)
Industrial Conciliation and Arbitration Act 1904 (SA)
Industrial Relations Act 1990 (Qld)
Industrial Relations Reform Act 1988 (Fed)
Industrial Relations Reform Act 1993 (Fed)
Intellectually Disabled Person's Services Act 1986 (Vic)
Intellectually Handicapped Persons Act 1985 (WA)
Justice Act 1959 (Tas)
Justices Act 1902 (WA)
Juvenile Crime (Serious and Repeat Offenders) Sentencing Act 1992 (WA)
Juvenile Justice Act 1983 (NT)
Juvenile Justice Act 1992 (Qld)
Juvenile Justice Regulations 1993 (Qld)
Maintenance Act 1980 (NT)
Marriage Act 1961 (Fed)
Mental Health Act 1963 (Tas)
Mental Health Act 1981 (WA)
Mental Health Act 1986 (Vic)
Migration Act 1958 (Fed)
Miscellaneous Act (Death Penalty Abolition) Amendment Act 1985 (NSW)
Misuse of Drugs Act 1990 (NT)
Oaths Act 1900 (NSW)
Oaths Act 1939 (NT)
Offenders Community Corrections Act 1963 (WA)
Peaceful Assembly Act 1992 (Qld)
Penalties and Sentences Act 1985 (Vic)
Poisons Act 1991 (Tas)
Poisons Regulation 1973 (Qld)
Police Act 1982 (WA)
Police Administration Act 1979 (NT)
Police Offences Act 1935 (Tas)
Police Regulations 1974 (Tas)
Prisons (Correctional Services) Act 1980 (NT)
Prisons Act 1952 (NSW)
Prisons Act 1981 (WA)
Privacy Act 1988 (Fed)
Privacy and Data Protection Bill 1994 (NSW)
Privacy Committee Act 1984 (Qld)
Probation and Parole Act 1983 (NSW)
Prostitution Regulation Act 1986 (Vic)
Prostitution Regulation Act 1992 (NT)
Public Health Act 1991 (NSW)
Public Instruction Act 1880 (NSW)
Publications Control Act 1989 (ACT)
Racial Discrimination Act 1975 (Fed)
Registration of Births, Deaths and Marriage Act 1980 (NT)
Removal of Prisoners (Australian Capital Territory) Act 1962 (ACT)
Removal of Prisoners (Territories) Act 1923 (Fed)
Residential Tenancies Act 1980 (Vic)
Sentencing (Amendment) Act 1993 (Vic)
Sentencing Act 1989 (NSW)
Sentencing Act 1991 (Vic)

Sex Discrimination Act 1984 (Fed)
Sex Discrimination Act 1995(Tas)
States Grants (Primary and Secondary Education Assistance) Act 1992 (Fed)
States Grants (Schools Assistance) Act 1988 (Fed)
Status of Children Act 1974 (Tas)
Status of Children Act 1979 (NT)
Statutes Amendment (Capital Punishment Abolition) Act 1984 (WA)
Student Assistance Act 1973 (Fed)
Student Assistance Amendment Act (No 2) 1991 (Fed)
Student Assistance Amendment Act 1991 (Fed)
Summary Offences Act 1953 (SA)
Summary Procedure Act 1923 (SA)
Supported Accommodation Assistance Act 1989 (Fed)
Teaching Service Act 1981 (NT)
Tobacco Advertising Prohibition Act 1992 (Fed)
Tobacco Control Act 1990 (WA)
Trade Practices Act 1974 (Fed)
Transplantation and Anatomy Act 1979 (ACT)
Videotapes Classification Control Act 1987 (WA)
Vocation, Education, Training and Employment Act 1991 (Qld)
Workplace Health and Safety Act 1989 (Qld)
Young Offenders Act 1993 (SA)
Young Offenders Act 1994 (WA)
Young Offenders Regulations 1995 (WA)
Youth Affairs Act 1986 (Vic)

ANNEXURE 3

Arrangements for Territory of Cocos (Keeling) Islands, Territory of Christmas Island and Norfolk Island.

Territory of Cocos (Keeling) Islands and Territory of Christmas Island

The Federal Governments policy in relation to the Territories it administers is, in part, to align conditions and standards in the Territories with those of comparable communities in the rest of Australia.

The Territories Law Reform Act 1992 (TLR Act) provided that from 1 July 1992 Western Australian (WA) law was applied in the Indian Ocean Territories (IOTs) by virtue of section 8A of the Cocos (Keeling) Islands Act 1955 (CKI Act) and the Christmas Island Act 1958 (CI Act).

Sections 8E of the CKI and CI Acts provides that Federal Acts extend to the Territories of their own force unless expressly providing otherwise. The TLR Act amended paragraph 17(a) of the Acts Interpretation Act 1901 to include the IOTs in the definition of "Australia" and "the Commonwealth".

Sections 8G of the CKI and CI Acts provides that powers vested in persons or authorities by an applied WA law are vested in the Minister and the Minister may further vest those powers or delegate them.

Sections 8H of the CKI and CI Acts provides that the Commonwealth may enter into arrangements with WA to administer the applied laws.

Section 14B of the CI Act and section 15AAB of the CKI Act confer the jurisdiction of the IOTs on the WA courts and court officers.

Under sections 8H of the CKI and CI Acts, the Commonwealth has entered into service delivery arrangements with the following WA authorities:

Legal Aid Commission of Western Australia
Ministry of Justice
Western Australian Fire Brigades Board
Valuer General's Office
Department of Land Administration
Department of Local Government
State Taxation Department and Land Valuation Tribunals
Office of Racing and Gaming - Liquor Licensing Authority
Small Business Development Corporation

Currently the IOT Administrations provide health and education services under the applied laws, generally employed WA registered health professionals and teachers, but no formal service delivery arrangements have been entered into at this stage.

In relation to the criminal law, the policing is provided by the Australian Federal Police (AFP) who operate under the applied WA laws. Prosecutions are conducted by the Commonwealth Director of Public Prosecutions (DPP), rather than the WA DPP.

In relation to the report under Article 44(1)(a) of the Convention, in general the comments provided by the WA Government would be relevant to the situation in the IOTs under the applied WA laws. However, in many cases, although the laws apply, the infrastructure to administer the laws is either not in place or is provided in a modified form by the IOTs' Administrations. For example, as yet there is no arrangement with the Department for Community Development, which is the authority mostly concerned with child welfare.

Norfolk Island

Norfolk Island is administered under the Norfolk Island Act 1979 which provides the basis of the Territory's legislative, administrative and judicial systems. The Norfolk Island Legislative Assembly has a range of local and state type powers broadly comparable to those exercised by the governments of the Australian Capital Territory and the Northern Territory. The Federal Government retains the power of veto over legislation in some areas eg education and industrial relations. The Legislative Assembly also has restricted legislative powers in relation to some Federal type powers such as local immigration, social security etc. Generally, Federal laws do not apply to Norfolk Island unless expressed to do so.

The Norfolk Island Government has legislative and executive responsibility for "Child, Family and Social Welfare" under Schedule 2 of the Norfolk Island Act 1979. The Norfolk Island Child Welfare Ordinance 1937 is meant to provide for the special needs of children for care and protection. However, that legislation is apparently inadequate compared with equivalent mainland legislation. In October 1990 the Norfolk Island Government informed the Legal Regimes Inquiry of the House of Representative Standing Committee on Legal and Constitutional Affairs ("Islands in the Sun") that:

> "The Government acknowledges that the law is in some areas inadequate, and points to the following areas as being especially important.
>
> ... The present legislation governing child welfare and mentally ill persons (Child Welfare Ordinance 1937, Lunacy Ordinance 1932) is grossly deficient. Work began in 1985 on replacements for both Ordinances, but higher priority matters meant that the review was never finished. The Government proposes to revive consideration of these topics as soon as possible."

There has been no further progress since that time.

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